

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 20-cv-977-PAB-SKC

THOMAS CARRANZA;
JESUS MARTINEZ;
RICHARD BARNUM;
THOMAS LEWIS;
MICHAEL WARD;
COLBY PROPPES; and
CHAD HUNTER,

Plaintiffs, on their own and on behalf of a class of similarly situated persons,

v.

STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

**JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, CERTIFICATION OF A CLASS AND APPOINTMENT OF CLASS
COUNSEL, AND PERMISSION TO POST CLASS NOTICE**

Plaintiffs Jesus Martinez and Chad Hunter (collectively “Plaintiffs”), through counsel, and Defendant Steven Reams, through counsel, move for preliminary approval of a class action settlement, certification of a class, appointment of class counsel, and permission to post class notice. In support of this motion, they state as follows:

INTRODUCTION

Plaintiffs brought this case as a class action, alleging Defendant Sheriff Reams acted with deliberate indifference to the lives and health of medically vulnerable persons in his custody in the Weld County Jail (“WCJ”) by failing to take necessary measures to prevent the spread of COVID-19 and to protect such medically vulnerable persons from COVID-19. Plaintiffs brought two claims for declaratory and injunctive relief under 42

U.S.C. § 1983, alleging violation of the Due Process Clause under the Fourteenth Amendment, and for cruel and unusual punishment under the Eighth Amendment. Defendant Reams denied any wrongdoing and contended that he was taking appropriate measures to protect inmates at the WCJ.

This Court held a preliminary injunction hearing in this matter on April 30, 2020. By Order dated May 11, 2020, this Court entered a detailed preliminary injunction setting forth steps Defendant must take to identify and to protect medically vulnerable inmates at the Weld County Jail. [Dkt. 55]. The preliminary injunction has been extended multiple times, most recently through December 9, 2020. [Dkt. 93].

With the benefit of this Court's preliminary injunction ruling, the parties engaged in a protracted, arms-length negotiation to attempt to resolve this dispute. Those efforts have proven successful. The parties now bring this motion seeking preliminary approval of their class action settlement and approval of a settlement class, which if approved would result in the entry of a detailed Consent Decree, in the form attached hereto as Exhibit A, that ensures that measures remain in place to protect class members from COVID-19 within the WCJ through the duration of this public health emergency.

Preliminary Approval of the Parties' Settlement

Fed. R. Civ. P. 23(e) requires the "court's approval" for any settlement that includes certification of a class. Before approving a class settlement, the Court must hold a hearing to determine whether the settlement is "fair, reasonable, and adequate," after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arms-length; (C) the relief provided for the class is adequate; and (D) the proposal treats class members equitably relative to each

other. See Fed. R. Civ. P. 23(e)(2). The Tenth Circuit has recently affirmed that the key questions when undertaking this inquiry are whether: (1) the settlement was fairly and honestly negotiated, (2) serious legal and factual questions placed the litigation's outcome in doubt, (3) the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation, and (4) [the parties] believed the settlement was fair and reasonable. See *Elna Sefcovic, LLC v. TEP Rocky Mtn., LLC*, 807 F. App'x 752, 757 (10th Cir. 2020) (quoting *Tennille v. W. Union Co.*, 785 F.3d 422, 434 (10th Cir. 2015)). The settlement the parties seek to have approved by this Court meets all of these criteria.

A. The Settlement Was Fairly and Honestly Negotiated.

The proposed Consent Decree that the parties have placed before this Court was negotiated at arms-length by attorneys with no conflicts of interest who vigorously advocated for their respective clients' positions. The negotiations began in July 2020 with telephone calls among counsel and exchanges of draft settlement papers. When the negotiations stalled, a breakthrough was achieved through direct phone calls between the Legal Director of the ACLU of Colorado and the County Attorney for Weld County. Once back on track, multiple drafts of a proposed agreement were exchanged, with compromises made by both sides. That spirited, arms-length negotiation process ultimately proved successful in allowing the parties to achieve a resolution that both sides agree will promote safety in the WCJ with respect to COVID-19, while allowing Sheriff Reams to protect the public and operate the WCJ as required by law. There has been no suggestion of any conflicts of interest with respect to the negotiation of this agreement, and there were none.

B. Serious Legal and Factual Questions Placed the Litigation's Outcome in Doubt.

While Plaintiffs' counsel believe that Plaintiffs would have prevailed at trial, they had no certainty as to what the scope of relief would be in an action such as this one. Given that COVID-19 is a new disease and the scope of knowledge about it is constantly evolving, there is inherent uncertainty as to what relief the Court would ultimately order if liability were found at trial. For his part, Defendant Sheriff Reams has continued to maintain that he did not act with deliberate indifference to the rights of Plaintiffs, and if this case were to proceed to trial, Defendant believes this Court would have determined the Sheriff has not been deliberately indifferent. In light of the foregoing, both sides perceived uncertainty as to the litigation's outcome if the matter proceeded to trial.

C. Immediate Recovery Is More Valuable Than Proceeding To Trial.

Both sides to this dispute have used settlement negotiation to achieve a creative result which includes immediate protections that may not have been provided even if Plaintiffs prevailed at trial. For example, the proposed Consent Decree contains modified arrest standards for the WCJ that would be hard to have achieved through litigation, and detailed information-sharing requirements and restrictions that similarly would have been hard to achieve through litigation. Moreover, given the immediacy of the COVID-19 crisis, waiting until after trial in mid-2021 to secure the relief agreed to in the proposed Consent Decree would have sacrificed much of the value of litigating in the first place.

D. The Parties' Settlement Is Fair and Reasonable.

The parties' settlement negotiations began with an understanding to use the requirements this Court imposed through its preliminary injunction as a baseline for the negotiations, as those requirements already had the Court's imprimatur of fairness. The

parties then considered each side's requests for modifications to those procedures, as well as Plaintiffs' demand for attorney's fees. Key terms of the final agreements reached in the accompanying proposed Consent Decree are as follows:

- 1) For purposes of the proposed Consent Decree, the designation of who is "medically vulnerable" is defined in line with U.S. Centers for Disease Control and Prevention ("CDC") guidance current as of the date the proposed Consent Decree and Final Judgment was submitted to the Court, yet subject to modification if the CDC's guidance changes;
- 2) WCJ will identify medically vulnerable inmates during booking and intake, including screening for specific medical conditions set forth in the proposed Consent Decree, in English or Spanish at each inmate's election. Persons identified as medically vulnerable will be protected from exposure to others during the remainder of the intake process to the extent possible;
- 3) WCJ will attempt to single-cell medically vulnerable inmates in the intake/transition units consistent with CDC guidelines, and the Consent Decree contains specific procedures to minimize exposure to others if single cells are not available based on the population size of WCJ;
- 4) WCJ will continue to limit exposure of medically vulnerable persons in the general jail population, including with respect to cell assignments and with respect to time spent outside of cells;
- 5) WCJ will permit the maximum amount of daily out-of-cell time for inmates consistent with social distancing protocols and allowable cohorting;

- 6) WCJ will medically isolate COVID-19-positive inmates in an isolation unit consistent with CDC guidelines and ensure that medical isolation for COVID-19 inmates is in a non-punitive environment, allowing access to personal and recreational items which can be effectively sanitized;
- 7) WCJ will continue stringent enhanced sanitation procedures throughout the jail to help control the spread of COVID-19;
- 8) WCJ will distribute masks, with the option to provide two cloth masks per inmate for non-medically vulnerable persons, and disposable masks for medically vulnerable persons, with the disposable masks to be replaced at the frequency consistent with CDC guidelines and manufacturer recommendations;
- 9) To help limit the spread of COVID-19 in the community outside of the jail, inmates will be given masks to take with them upon release from the WCJ;
- 10) Medically vulnerable inmates will be regularly monitored by healthcare professionals for COVID-19 symptoms;
- 11) WCJ will provide testing for inmates for COVID-19 consistent with CDC guidelines;
- 12) Remote visitation opportunities will be continued;
- 13) Inmates will receive regular information and updates regarding COVID-19 prevention;
- 14) Persons identified as “medically vulnerable” at intake will be provided with a document stating that they have been so designated;

- 15) Defendant will maintain modified arrest standards, varying somewhat depending on the status of an ongoing jail construction project, that will remain in place for the duration of the COVID-19 emergency. These modified arrest standards, set forth as an attachment to the proposed Consent Decree, restrict who WCJ will accept, by category of offense;
- 16) On a regular basis, Defendant will advise chiefs of police in Weld County to be judicious with jail space and to minimize the scope of arrestees in their jurisdictions and maximize the number of persons subject to arrest who are issued summonses or personal recognizance bonds in their jurisdictions;
- 17) Every two weeks, WCJ will provide the Chief Judge for the Nineteenth Judicial District of Colorado and the Colorado Division of Adult Parole a list of all inmates housed at WCJ, with a request to the Chief Judge for a docket review for potential judicial action;
- 18) Defendant will comply with robust data reporting requirements to Plaintiffs' counsel, so as to allow class counsel to monitor the performance of WCJ under the Consent Decree. Plaintiffs, and Class counsel when acting on behalf of class members, agree not to circumvent these agreed data reporting requirements by making additional requests under the Colorado Open Records Act or Colorado Criminal Justice Records Act relating to WCJ's COVID-19 response or population statistics;
- 19) Plaintiffs and the Class will release claims for injunctive and declaratory relief arising from COVID-19 at the WCJ, and associated costs and attorney's fees, accruing through the date of the Consent Decree. The

release does not include claims concerning conduct that occurs after the date the Consent Decree is entered, and it does not include any money damages claims;

- 20) The duration of the Consent Decree is through the time that the Executive Order of the Governor of the State of Colorado declaring a statewide emergency for COVID-19 expires and is not renewed or replaced with an equivalent declaration;
- 21) Defendant will pay counsel for Plaintiffs \$122,387.60 for attorney's fees and costs; and
- 22) The parties agree that the Consent Decree is entered into for purposes of settlement and should not be construed as an admission of wrongdoing.

All parties believe the foregoing terms are a fair and reasonable resolution to this dispute. The resolution contains detailed, concrete steps that are consistent with CDC best practices. They reflect the strong desire of all parties to ensure that COVID-19 exposure at WCJ is minimized to the extent reasonably possible.

For the foregoing reasons, the parties request that the Court provide its preliminary approval of the proposed settlement embodied in the Consent Decree, and find that it satisfies the requirements of Fed. R. Civ. P. 23(e)(2).

Certification of Settlement Class and Appointment of Class Counsel

Plaintiffs and Defendant request that this Court certify a settlement class in this action pursuant to Fed. R. Civ. P. 23(b)(2), and that it appoint counsel for Plaintiffs as class counsel. The settlement class the parties seek to have certified is a class of the following individuals:

All past, present, and future inmates housed within the Weld County Jail from April 7, 2020 through the “COVID-19 Emergency End Date” who are “medically vulnerable.”

An inmate is “medically vulnerable” if, pursuant to CDC guidelines for correctional facilities like the WCJ which exist as of the date this proposed Consent Decree and Final Judgment was submitted to the Court, the inmate has one or more of the following conditions: is 65 years and older; has chronic lung disease including COPD; has moderate to severe asthma; has serious heart conditions such as heart failure, coronary artery disease or cardiomyopathies; has sickle cell disease; is immunocompromised; has severe obesity (e.g. BMI of 30 or higher); has diabetes; has chronic kidney disease and is undergoing dialysis; has liver disease; has cancer; is pregnant; or is a former or current cigarette smoker.

The “COVID-19 Emergency End Date” is the date on which Executive Order D 2020 205 issued by Colorado Governor Jared Polis, Declaring a Disaster Emergency Due to the Presence of Coronavirus Disease 2019 in Colorado, as subsequently amended or extended, expires and is not replaced by a similar Executive Order in light of the ongoing COVID-19 pandemic.

This proposed settlement class fully satisfies all of the requirements of Fed. R. Civ. P. 23, and specifically for certification of a class under Fed. R. Civ. P. 23(b)(2).

A. The Proposed Class Representatives

The two proposed class representatives fall within the high-risk populations who are particularly vulnerable to COVID-19 and particularly likely to suffer severe illness, life-altering complications, or death as a result of exposure to the virus.¹ The proposed class representatives are Plaintiff Jesus Martinez and Plaintiff Chad Hunter. Both of the proposed class representatives are being held at WCJ.

¹ Five of the original plaintiffs in this action voluntarily dismissed their claims because they have been released or are in the process of being released from WCJ.

B. The Proposed Class Satisfies the Requirements of Fed. R. Civ. P. 23²

Class certification is proper under Fed. R. Civ. P. 23(a) if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. In addition, the proposed class must be certifiable under one of the three sub-provisions of Fed. R. Civ. P. 23(b). Here, Plaintiffs seek certification under Fed. R. Civ. P. 23(b)(2), because the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

1. The proposed class complies with Rule 23(a)

- i. The proposed class is so numerous that joinder would be impracticable.

A class must be sufficiently numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). The impracticability of the joinder requirement does not require that joinder is impossible, but only that the plaintiffs “will suffer a strong litigational hardship or inconvenience if joinder is required.” *Cook v. Rockwell Intern. Corp.*, 151 F.R.D. 378, 384 (D. Colo. 1993). “In determining whether a proposed class meets the numerosity requirement, ‘the exact number of potential members need not be shown, ‘and a court ‘may make common sense assumptions to support a finding that joinder

² Defendant states he jointly moves for class certification for purposes of settlement only. See Fed. R. Civ. P. 23(e) (allowing certification of “class proposed to be certified for purposes of settlement”). If the Court does not approve this settlement and enter the Consent Decree and Final Judgment, or if the settlement is otherwise not finalized, then Defendant reserves the right to contest class certification.

would be impracticable.” *In re Thornburgh Mortgage, Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1221 (D.N.M. 2012) (internal quotation omitted). The parties estimate that 69% of the WCJ’s current population of 500 inmates is medically vulnerable according to CDC guidance current as of the date and time this Joint Motion was submitted. The class also includes a large number of unknown and unnamed future class members, who will be detained in the Weld County Jail in the future and are medically vulnerable to COVID-19. Given these numbers, and the fact that the class also includes persons who will be arrested and detained at the jail in the future, joinder is impracticable and numerosity is satisfied. See *Helmer v. Goodyear Tire & Rubber Co.*, 2014 WL 1133299 at *3-4 (D. Colo. Mar. 21, 2014); *Newberg on Class Actions* § 25:4 (4th ed. 2016) (“Even a small class of fewer than 10 actual members may be upheld if an indeterminate number of individuals are likely to become class members in the future or if the identity or location of many class members is unknown for good cause.”); *Jack v. Am. Linen Supply Co.*, 498 F.2d 122, 124 (5th Cir. 1974) (numerosity requirement satisfied when class included “unknown, unnamed future” class members rendering joinder “certainly impracticable”).

ii. The proposed class representatives present issues of fact and law in common with the class.

To satisfy commonality, the “[p]laintiff must allege a ‘common contention of such a nature that it is capable of class-wide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.’” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). “What matters to class certification . . . is not the raising of common ‘questions’ – even in droves – but rather, the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation.” *Id.* (internal quotation omitted). For the purposes of

commonality, “even a single common question will do.” *Id.* at 359. Courts have repeatedly found commonality is met where the class’s claims arise from a common course of conduct on the part of the defendant. See *Kerns v. Spectralink Corp.*, 2013 WL 27380785, at *2 (D. Colo. July 1, 2003). Likewise, in civil rights lawsuits challenging conditions of detention, commonality is satisfied where the lawsuit challenges “systemic policies and practices that allegedly expose inmates to a substantial risk of harm,” even where there are “individual factual differences among class members.” *Parsons v. Ryan*, 754 F.3d 657, 681-82 (9th Cir. 2014) (collecting cases across the country).

In this case, there are multiple common questions of law and fact pertaining to the WCJ’s policies and practices regarding COVID-19. These include questions of whether the WCJ’s course of conduct has exposed the class to harm and/or a substantial risk of harm due to its deliberate indifference to the risks of COVID-19, and whether WCJ has failed to take appropriate preventative measures on a system-wide basis. Even more importantly, the answers to these questions drive the resolution of this litigation and have resulted in the proposed Consent Decree, which aims to protect medically vulnerable inmates from exposure to, and death or serious injury from, COVID-19 to the maximum extent possible while they are housed in the WCJ.

iii. The proposed class representatives’ claims are typical of those of the class.

Fed. R. Civ. P. 23(a)(3) requires that the putative class representatives’ claims be typical of those of the class. “[A] named plaintiff’s claim is ‘typical’ when it arises out of the same event, practice or course of conduct of the defendant, and is based on the same legal theory on which the class claims are predicated.” *Murphy v. Lenderlive Network, Inc.*, 2014 WL 5396165, at *4 (D. Colo. Oct. 22, 2014). “Provided the claims of the Named

Plaintiffs and class members are based on the same legal or remedial theory, differing fact situations of the class members do not defeat typicality.” *DG ex rel. Stricklin v. Devaugh*, 594 F.3d 1188, 1198-99 (10th Cir. 2010). For the same reason that there are overwhelmingly common issues of fact and law, the Plaintiffs’ claims are typical of the class. See *Wal-Mart*, 564 U.S. at 349 n.5 (“The commonality and typicality requirements of Rule 23(a) tend to merge.”).

Here, the named Plaintiffs have the same claims and face the same potential harms as members of the proposed class. Named Plaintiffs, similarly to members of the class, are both medically vulnerable.

iv. The proposed class representatives and class counsel can adequately represent the case.

Fed. R. Civ. P. 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” The adequacy requirement ensures that there are no potential “conflicts of interest between named parties and the class they seek to represent.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). “Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) with the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F. 3d 1180, 1187-88 (10th Cir. 2002) (internal citation omitted). Adequate representation is usually presumed absent contrary evidence. See 1 *Newberg on Class Actions* § 3:72 (5th Ed. 2019).

First, there is no conflict between the named Plaintiffs and the members of the class. As described above, the named Plaintiffs and class members have the same injury and seek the same relief. Likewise, Plaintiffs’ counsel, consisting of Hutchinson, Black

and Cook, LLC in cooperation with the ACLU of Colorado and Killmer, Lane & Newman, LLP; Stimson Stancil LaBranche Hubbard LLC; and Maxted Law LLC, are well-qualified and highly experienced in class action and civil rights matters, and have done extensive work investigating this action. Counsel are exceptionally well versed in class actions and constitutional law, with decades of experience litigating such cases, and have sufficient resources to vigorously prosecute this case.

2. The proposed class is appropriate under Rule 23(b)(2)

Certification under Fed. R. Civ. P. 23(b)(2) is appropriate where, as here, defendants “acted or refused to act on grounds that apply generally to the class[.]” A court may certify a Fed. R. Civ. P. 23(b)(2) class where “a single injunction or declaratory judgment would provide relief to each member of the class.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 851-52 (2018) (internal quotation marks omitted). The claims raised and the relief sought by Plaintiffs in this action are precisely the sort that Fed. R. Civ. P. 23(b)(2) was designed to facilitate: “[c]ivil rights cases against parties charged with unlawful, class based discrimination are prime examples” of proper (b)(2) actions. *Amchem Prods.*, 521 U.S. at 614. Here, Plaintiffs seek uniform standardized practices and procedures to protect inmates from exposure to COVID-19. This system-wide, process-based relief is exactly the type of single injunction that would benefit all members of the proposed class – and falls squarely within the purview of Fed. R. Civ. P. 23(b)(2) as a result. In light of the foregoing, the parties respectfully request a Fed. R. Civ. P. 23(b)(2) class be certified.

APPOINTMENT OF CLASS COUNSEL

Pursuant to Fed. R. Civ. P. 23(g)(1), at the time of class certification, the Court “must appoint class counsel.” Undersigned counsel for Plaintiffs who brought this action respectfully request to be appointed class counsel.

Undersigned counsel are a group of experienced civil rights lawyers from the ACLU of Colorado, Killmer, Lane and Newman, LLP, Hutchinson Black and Cook, LLC, Stimson Stancil Labranche Hubbard, LLC, and Maxted Law LLC who quickly organized in the early days of the COVID-19 crisis to protect inmates in the WCJ. They have devoted substantial resources to prosecute this case, acting on short notice to secure a preliminary injunction, and have continued to advocate zealously for their clients.

Counsel have years of experience handling class actions in federal and state courts in Colorado and elsewhere in the United States. Their work on this matter to date demonstrates their competence to be appointed as class counsel here.

NOTICE TO THE CLASS

Notice is not required to certify a Fed. R. Civ. P. 23(b)(2) class, which is the Rule 23 subsection under which the parties propose to certify a class. See Fed. R. Civ. P. 23(c)(2)(A) (“For any class certified under Rule 23(b)(1) or (b)(2), the court *may* direct appropriate notice to the class.” (emphasis added)); see also Wal-Mart, 564 U.S. at 362 (“The Rule provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does not even oblige the District Court to afford them notice of the action.”); Skinner v. Uphoff, 175 F. App’x 255, 257-58 (10th Cir. 2006) (“Where, as here, a class is certified under Rule 23(b)(2), notice is discretionary.”) (affirming trial court’s decision not to provide notice to inmate class members before granting summary judgment, in a civil

rights case seeking only injunctive and declaratory relief regarding conditions of confinement); *Pelt v. Utah*, 539 F.3d 1271, 1289 (10th Cir. 2008) (“Due process does not require notice for absent class members in all actions under Rule 23(b)(2), as long as the class members were adequately represented.”). Fed. R. Civ. P. 23(e)(1) does require notice to absent class members prior to settlement, however. That notice must be provided “in a reasonable manner.” Fed. R. Civ. P. 23(e)(1)(B).

Though the Court has the discretion to select whatever manner of notice it believes appropriate, the parties suggest a “reasonable manner” to provide notice would be to post notices in portions of the WCJ that house medically vulnerable inmates where it is visible to them. The form of the notice proposed to be posted, to which the proposed Consent Decree attached hereto as Exhibit A would be appended, is attached hereto as Exhibit B. It is not necessary to give individual notices to all class members, for several reasons. First, this Court has already held an evidentiary hearing and has already made substantial factual findings about COVID-19 and the WCJ, so objections about the scope of the Consent Decree will likely add little new information. Second, the proposed Consent Decree shows the myriad agreed steps which Defendant and the WCJ will continue to take to protect medically vulnerable inmates from COVID-19. While class members are entitled to submit objections, providing posted notice is a “reasonable manner” to inform inmates of this settlement and the inmates’ option to file an objection. It would also be a significant and unnecessary expenditure of resources for WCJ staff to prepare to distribute notices to individual inmates and then collect objections, when the staff’s time and resources should instead be devoted to protecting the health and safety of inmates.

And finally, posted notice is reasonable here because inmates “were adequately represented” by class counsel. *Pelt*, 539 F.3d at 1289. Plaintiffs’ counsel have thoroughly investigated and litigated this case. They have continued to monitor the situation in the WCJ, have continued to communicate with inmates, and have vigorously represented the interests of all class members throughout this litigation and the negotiation of this proposed class settlement. In short, all class members were adequately represented.

CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court: (a) preliminarily approve the settlement embodied in the proposed Consent Decree attached as Exhibit A; (b) certify a class for purposes of settlement as described herein; (c) appoint the counsel listed below for Plaintiffs as class counsel; (d) approve the form of notice attached hereto as Exhibit B and instruct Defendant to post one copy of it in each WCJ housing unit which houses medically vulnerable inmates; and (e) set a date and time for a fairness hearing approximately six weeks from the date the Court grants this motion.

Dated and jointly and respectfully submitted this 30th day of November, 2020.

s/ Daniel David Williams

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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 30th day of November, 2020, a true and correct copy of the foregoing **JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF A CLASS AND APPOINTMENT OF CLASS COUNSEL, AND PERMISSION TO POST CLASS NOTICE** was electronically filed with the Clerk of Court which will send notification of such filing to the following email addresses:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-00977-PAB-SKC

THOMAS CARRANZA;
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STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

[proposed] CONSENT DECREE AND FINAL JUDGMENT

For good cause shown, including based on the evidence admitted at the evidentiary hearing in this matter on April 30, 2020, and in light of the parties' stipulation to the terms set forth below, the Court now Orders as follows:

I. DEFINITIONS

"COVID-19" means the disease caused by the 2019 novel coronavirus SARS-CoV-2 and all strains thereof.

"Plaintiffs" means Plaintiffs Thomas Carranza, Jesus Martinez, Richard Barnum, Thomas Lewis, Michael Ward, Colby Propes, and Chad Hunter.

"Inmates" means and includes persons who are housed within the Weld County Jail, including all persons who are either sentenced to the Weld County Jail, or pretrial detainees, or sentenced holds for the Colorado Department of Corrections.

EXHIBIT A

“Class” means all past, present, and future inmates housed within the Weld County Jail from April 7, 2020 through the COVID-19 Emergency End Date (as defined herein) who meet the definition of “medically vulnerable inmates” as defined herein.

“Defendant” means Steven Reams, in his official capacity as the Sheriff of Weld County.

“WCJ” means Weld County Jail.

“Preliminary Injunction Order” means this Court’s Order dated May 11, 2020 preliminarily enjoining conduct described therein, as subsequently amended and extended.

“CDC” means the Centers for Disease Control and Prevention within the United States Department of Health and Human Services.

“EPA” means the United States Environmental Protection Agency.

“Medically vulnerable” means inmates who, pursuant to CDC guidelines for correctional facilities like the WCJ which exist as of the date this proposed Consent Decree and Final Judgment was submitted to the Court, have one or more of the following conditions: are 65 years and older; have chronic lung disease including COPD; have moderate to severe asthma; have serious heart conditions such as heart failure, coronary artery disease or cardiomyopathies; have sickle cell disease; are immunocompromised; have severe obesity (e.g. BMI of 30 or higher); have diabetes; have chronic kidney disease and are undergoing dialysis; have liver disease; have cancer; are pregnant; or are former or current cigarette smokers.

II. RECITALS

A. On or about April 7, 2020, Plaintiffs filed a Complaint in the above-captioned civil action, Civil Action No. 1:20-cv-00977-PAB-SKC (the “Lawsuit”), in which

they asserted official capacity claims against Defendant contending their constitutional rights were violated in connection with Defendant's response to COVID-19 at the WCJ, and seeking declaratory relief, injunctive relief, and attorney fees and costs only, and not any compensatory or punitive damages.

B. On or about May 11, 2020, this Court entered the Preliminary Injunction Order in the Lawsuit.

C. Plaintiffs have pending a Motion for Class Certification, which is fully briefed.

D. The Parties to the Lawsuit consent to this Consent Decree and Final Judgment as a settlement and compromise to resolve the Lawsuit.

III. TERMS AND CONDITIONS

A. Class Certification.

The Parties shall jointly submit a motion for class certification for settlement purposes only, and for conditional approval of the class settlement. The motion for conditional approval shall specify the manner of providing notice to class members, which notice shall be agreed by all parties, and paid for by Defendant.

Contemporaneously with the filing of such motion, Plaintiffs shall withdraw their pending motion for class certification, without prejudice.

B. Full Release of Claims and Commitments from Plaintiffs

(1) **Release of Claims.** Except with respect to the relief provided in this Consent Decree and Final Judgment, Plaintiffs, on behalf of themselves and for and on behalf of the Class as is anticipated to be reflected in the aforementioned joint motion for conditional approval of the class settlement, hereby release and forever discharge Defendant and all employees of Defendant and/or of the Weld County Sheriff's Office

from any and all claims or causes of action for injunctive and declaratory relief concerning or relating in any manner to COVID-19, which may have accrued up to and including the date of this Order (including all attorney fees, costs, and expenses which do or may relate thereto), and which would seek by means of declaratory or injunctive relief to address subject matters governed by this Order. Plaintiffs further understand that factual matters now unknown to them may have given or may hereinafter give rise to disputes that are currently unknown, unanticipated, and unsuspected. Plaintiffs, on behalf of themselves and for and on behalf of the Class as is anticipated to be reflected in the aforementioned joint motion for conditional approval of the class settlement, acknowledge this Consent Decree is intended to and does release both known and unknown claims and causes of action for injunctive and declaratory relief, including those which would seek by means of declaratory or injunctive relief to address subject matters governed by this Order.

(2) Restriction on CORA Requests. Neither Plaintiffs, nor counsel when acting on behalf of Plaintiffs or members of the Class, nor employees or agents of Plaintiffs, shall request or cause to be requested from Defendant or any employee of the Weld County Sheriff's Office under the Colorado Open Records Act or the Colorado Criminal Justice Records Act the following: (a) any information or documents relating to Defendant's response to COVID-19 at the WCJ; or (b) any information or data relating to average daily population or population statistics at the WCJ.

C. Covenant Not to Sue

Plaintiffs, on behalf of themselves and for and on behalf of the Class as is anticipated to be reflected in the aforementioned joint motion for conditional approval of the class settlement, agree not to sue Defendant or any employee of the Weld County

Sheriff's Office for injunctive or declaratory relief regarding or relating to COVID-19 for conduct that occurred prior to the date of this Consent Decree and Final Judgment.

D. Agreement Respecting Taxes

Plaintiffs are responsible for any tax liability from any taxing authority with respect to the payment of Attorney Fees and Costs as specified below and Defendant shall have no tax liability with respect thereto.

E. Obligations of Defendant

From the date of this Consent Decree and Final Judgment, until and including the date on which Executive Order D 2020 205 issued by Colorado Governor Jared Polis, Declaring a Disaster Emergency Due to the Presence of Coronavirus Disease 2019 in Colorado, as subsequently amended or extended, expires and is not replaced by a similar Executive Order in light of the ongoing COVID-19 pandemic (the "COVID-19 Emergency End Date"), Defendant shall:

(1) Identify all medically vulnerable inmates during the booking and intake process and inform any medically vulnerable inmates that they have been so designated. The scope of what makes an inmate medically vulnerable shall be updated to conform with current CDC guidance in the event the CDC modifies the aforesaid guidelines, which update shall be self-executing upon counsel for Defendant providing counsel for Plaintiffs and members of the Class either (a) an official order from the CDC which would be self-authenticating pursuant to Fed.R.Evid. 902(1), or (b) an equivalent official publication from the CDC's website which otherwise would be self-authenticating pursuant to Fed.R.Evid. 902(5). All inmates must be asked if they have any of the conditions that would classify them as "medically vulnerable" as defined herein at intake. The descriptions for screening questions must, at a minimum, mirror the level of

specificity in the definition of “medically vulnerable” set forth above, and must be given in Spanish for persons who indicate a preference for conditions to be listed in Spanish. The descriptions must also provide a list of the most common conditions that meet the definitions of “immunocompromised,” and “liver disease.” Self-reported conditions are to be accepted as true unless and until there is definitive medical evidence to the contrary. Until the process of determining whether inmates in intake have one or more of the aforesaid conditions which would cause them to be designated as medically vulnerable is completed, inmates should not be exposed to other inmates and should be exposed only to the smallest number of WCJ staff as possible.

(2) Take actions to keep the WCJ population as low as possible, while protecting public safety, so as to maximize the number of medically vulnerable inmates who can be housed in a single-cell, which shall consist of the following:

- a. Maintain the “Emergency Arrest Standards Due To COVID-19/Jail Construction” included in ECF 85-2 filed with the Court in this Lawsuit until either the COVID-19 Emergency End Date or the date the WCJ housing unit closed for construction as indicated to the Court in ECF 85-2 is reopened, whichever is sooner.
- b. Upon said housing unit being reopened, if sooner, subsequently maintain “Modification to Arrest Standards Due To COVID-19” attached hereto as **Exhibit A-1**, until the COVID-19 Emergency End Date.¹

¹ With respect to the offenses identified in Paragraph 4 under the heading “The Weld County Jail Will Accept” in **Exhibit A-1**, for anyone booked into the WCJ in the narrow additional categories specified in said Paragraph 4, Defendant will give notice to the Weld County Attorney, who will in turn notify counsel for the Class.

- c. Retain the right no longer than the COVID-19 Emergency End Date, in Defendant's sole discretion, to reinstitute the "Emergency Arrest Standards Due To COVID-19/Jail Construction" included in ECF 85-2 filed with the Court in this Lawsuit, or substantially similar arrest standards if appropriate based on WCJ inmate population, per capita when considering all housing units then open and the housing units' then-current uses, increasing to a same or similar percentage level which motivated the filing of ECF 85-2 with the Court in this Lawsuit. If Defendant needs to reinstitute such Arrest Standards, Defendant by and through his counsel shall, contemporaneously with such reinstitution, notify Mark Silverstein at msilverstein@aclu-co.org and Nicole Loy at nloy@aclu-co.org.
- d. Disseminate regular advisements to the Weld Chiefs of Police to be judicious about minimizing the scope of arrestees in their jurisdictions and maximizing the scope of persons who are issued a summons or given a bond upon personal recognizance in their jurisdictions.
- e. At least one time every fourteen days:
 - i. Provide a list of all inmates currently housed in the WCJ to the Chief Judge of the District Court for Colorado's 19th Judicial District with a copy to Mark Silverstein at msilverstein@aclu-co.org and Nicole Loy at nloy@aclu-co.org, requesting a docket review for potential judicial action;

- ii. Provide a list of all inmates subject to parole holds to the Colorado Division of Adult Parole, requesting a review for potential parole action; and
 - iii. Provide Mark Silverstein at msilverstein@aclu-co.org and nloy@aclu-co.org with an identification of which inmates in the WCJ are classified as “medically vulnerable” pursuant to this Consent Decree, for a lookback period of the prior fourteen days defined as the two-weeks-previous Monday at 05:00:00 AM through the previous Sunday at 05:00:01 AM, thus resulting in fourteen (14) days of reported data, at 05:00:00 AM each day of said lookback period. Mr. Silverstein, for himself and on behalf of all counsel who entered an appearance for Plaintiffs or the Class or both in the Lawsuit, agrees such identification shall be used only by counsel acting on behalf of Plaintiffs or members of the Class and shall be used only for class counsel purposes.
- f. With respect to each WCJ inmate classified as “medically vulnerable” as set forth herein and who is currently in WCJ general population or in the intake/transition units, or who may subsequently be booked into the WCJ through and including the COVID-19 Emergency End Date, promptly furnish to each such inmate a written notification that such inmate has been classified as “medically vulnerable” and is at a higher risk for experiencing adverse health consequences from contracting COVID-19, if contracted, based on the intake screening of such inmate. This form will contain such inmate’s name and date of birth,

the date such inmate's intake screening was conducted, and the initials and/or signature of the medical professional who conducted it. An exemplar of this form is attached hereto as **Exhibit A-2**.

- g. If necessary to maintain low jail population within the WCJ, utilize statutory authority contained in C.R.S. § 17-26-109 to grant time credits to sentenced prisoners.

(3) Ensure the following respecting intake/transition units within the WCJ: medically vulnerable inmates admitted to WCJ's intake/transition units are housed in a cell within such unit alone and away from other inmates; if it is not possible to house a medically vulnerable inmate alone in a cell within an intake/transition unit due to the WCJ's physical layout, population level, and classification needs, the inmate must be housed in a cell within an intake/transition unit with no more than one other inmate, which inmate must also be a medically vulnerable inmate, in accordance with cohorting practices the Centers for Disease Control ("CDC") specifically outlines and endorses; and if despite this allowance, it still is not possible to house a medically vulnerable inmate either alone or with only one other medically vulnerable inmate in a cell within an intake/transition unit due to the WCJ's then-existing physical layout, population level, and classification needs, and no other option is apparent, Detentions Division Deputies will contact their Shift Sergeant for guidance immediately, and this existing policy will be maintained subject to the WCSO's maximum staffing ability.

(4) Ensure the following for all inmates: Continue the WCSO's existing policy of ensuring, to the maximum extent possible considering the WCJ's physical layout, population level, and classification needs, the following respecting general population units within the WCJ: medically vulnerable inmates are treated as a Special Management

population in the WCJ; upon completing the intake/ transition unit quarantine protocol and transferring to WCJ general population, a medically vulnerable inmate is not housed in a cell with an inmate who is not medically vulnerable and an inmate who is not medically vulnerable is not housed in a cell with a medically vulnerable inmate; and medically vulnerable inmates remain in current cohorted “family units” to the extent they are cohorted only with one other medically vulnerable inmate in their cell.

(5) Allow the maximum amount of daily out-of-cell time WCJ can provide inmates while following cohorting and social distancing protocols.

(6) Require WCJ Detentions Division staff to ensure enhanced sanitation in the WCJ housing units; prior to medically vulnerable inmates entering any WCJ common area, which includes bathrooms, an EPA-approved disinfectant spray which combats COVID-19 as certified by the EPA will be sprayed on all surfaces open for use by such inmates, allowing for recommended contact time for complete disinfection to occur before such inmates enter; medically vulnerable inmates will be encouraged to practice social distancing continuously (to supplement the existing placement of thick black gaffers tape throughout the WCJ for visual representation of six feet apart from person to person), to disinfect any commonly used equipment on their way out and their way in, and to increase their own cleaning practices to include frequent hand washing and personal sanitation; medically vulnerable inmates who willfully refuse to adhere to recommended practices to prevent the spread of COVID-19 despite such encouragements will be noted in the WCJ records management system; personal hygiene supplies and bottles of an EPA-approved disinfectant spray will remain available to all inmates, inclusive of medically vulnerable inmates, without cost; in the event the WCJ inmate population reaches a low enough threshold that “medically

vulnerable” inmates can be further distanced from non-“medically vulnerable” inmates, then they shall be, while recognizing that limiting movement from one housing unit to another to ensure prevention of cross-contamination from one population to another population is consistent with public health guidance in a correctional setting; WCJ will maintain increased supplies of bottles of an EPA-approved disinfectant spray and masks to ensure all inmates have access to both masks and such disinfecting spray at all times; when necessary and only in a medically-sound manner that does not aerosolize droplets that may contain COVID-19 or otherwise lead to increased spread of COVID-19, power washers may be used on water-resistant surfaces, when applicable, to enhance cleaning; when necessary, only Trustee inmates who are both properly trained in biohazard cleanup and outfitted with proper personal protective equipment will be utilized to clean up areas previously occupied by an inmate confirmed to have tested positive for COVID-19. WCJ shall provide increased professional cleaning services to augment the enhanced sanitation efforts of Detentions Division staff if warranted by the situation.

(7) Ensure that all inmates shall have access to at least two cloth masks or at least one disposable mask at all times. WCJ shall monitor mask usage by all inmates; all WCJ staff (and third-party contractors) shall be required to wear a face mask at all times when interacting in any manner with inmates, and WCJ shall monitor mask usage by such staff; WCJ shall provide reusable cloth masks to inmates who are not medically vulnerable and ensure such inmates are provided the opportunity to wash said cloth masks every three days; WCJ shall provide disposable masks to medically vulnerable inmates and such masks will be replaced in accordance with CDC guidelines and

manufacturer recommendations, or sooner if said masks become soiled or damaged.

WCJ will continue to provide a mask to all inmates who are released from the WCJ.

(8) Ensure medical monitoring for medically vulnerable inmates housed within the WCJ: qualified medical staff will perform four “daily checks” on medically vulnerable inmates consisting of temperature checks and full symptom screenings.

(9) Ensure that symptom screening shall be dictated, at minimum, by then-current CDC guidelines and will be according to the attached second updated screening protocol (attached as **Exhibit A-3** to this Consent Decree).

(10) Provide testing for all inmates according to then-current CDC guidelines as soon as possible following the report of one or more symptoms for COVID-19 consistent with CDC screening questions, without imposing additional requirements beyond the CDC screening questions, although Defendant may make testing more frequently available. Testing shall be performed as soon as possible from the time of the report. When an inmate tests positive for COVID-19 or is designated by a health care professional as presumptive positive for COVID-19, the WCJ will follow current CDC criteria for testing, quarantine, and isolation. These criteria have changed since CDC guidelines for correctional facilities were originally issued and may continue to change as new data points are made available to and accounted for by the CDC.

(11) Continue implementation of the following protocol in both intake/transition units and general population units: an inmate in the WCJ who is symptomatic for or tests positive for COVID-19 is isolated in a medical isolation unit in the WCJ per current CDC criteria. These criteria have changed since CDC guidelines for correctional facilities were originally issued and may continue to change as new data points are made available to and accounted for by the CDC.

(12) Ensure that medical isolation is a non-punitive environment and inmates shall have access to personal items, such recreational materials which can be effectively sanitized, and time outside of their cell while in medical isolation;

(13) Continue to allow remote visitation for inmates with any visitor, including personal, jail-based behavioral, legal, or others; however, nothing in this agreement prohibits or discourages allowing for in-person visitation in compliance with CDC guidelines. Video visitation from the WCJ's front lobby shall remain a free service.

(14) Provide informational updates to inmates housed within the WCJ, both via paper as appropriate and via video message, as to best practices on how to prevent the spread of COVID-19, which shall include, as part of the intake process, an initial viewing of a previously prepared video addressing best practices for preventing the spread of COVID-19;

(15) Furnish to the ACLU of Colorado, via email to Mark Silverstein at msilverstein@aclu-co.org and Nicole Loy at nloy@aclu-co.org, on or before 11:59:59 PM Mountain Time on Tuesday of every week, the following WCJ data for the lookback period which is defined as the previous Monday at 05:00:00 AM through Sunday at 05:00:01 AM, thus resulting in seven (7) days of reported data, at 05:00:00 AM each day of said lookback period:

- a. Average daily inmate population as logged at 05:00:00 AM each day of the lookback period;
- b. Average daily population of medically vulnerable inmates as logged at 05:00:00 AM each day of the lookback period;
- c. Total number of medically vulnerable inmates identified during the intake screening process each day of the lookback period.

- d. Daily count of inmates housed in medical isolation units within the WCJ for each day of the lookback period;
- e. Total number of COVID-19 tests administered to inmates each day during the lookback period and results of those tests (positive, negative, inconclusive); and
- f. Total number of inmates transferred to a hospital for care each day during the lookback period due to COVID-19.

The procedures set forth above may be modified as necessary by further Order from the Court. In addition, as set forth in Section III.E.2 above, Defendant by and through his counsel shall furnish Mr. Silverstein with an identification of which inmates in the WCJ are classified as “medically vulnerable” pursuant to this Consent Decree, for a lookback period of the prior fourteen days defined as the two-weeks-previous Monday at 05:00:00 AM through the previous Sunday at 05:00:01 AM, thus resulting in fourteen (14) days of reported data, at 05:00:00 AM each day of said lookback period. Defendant shall furnish Mr. Silverstein with such identification every fourteen days, that is, with every other transmission of the data set forth in this paragraph which Defendant is furnishing to Mr. Silverstein on a weekly basis. Mr. Silverstein, for himself and on behalf of all counsel who entered an appearance for Plaintiffs or the Class or both in the Lawsuit, agrees such identification shall be used only by counsel acting on behalf of Plaintiffs or members of the Class and shall be used only for class counsel purposes.

F. Payment of Certain Attorney Fees and Costs Attributable to Counsel for Plaintiffs and the Class from Defendant By and Through the Weld County Board of County Commissioners

Within twenty-one (21) days from the date the Court enters this Order in its final form, Defendant shall cause to be paid \$122,387.60 as reimbursement for Attorney

Fees and Costs. Plaintiffs, on behalf of themselves and for and on behalf of the Class as is anticipated to be reflected in the aforementioned joint motion for conditional approval of the class settlement, agree that such payment is the full and final amount they are entitled to receive for Attorney Fees and Costs in this action for work performed through the date of this Consent Decree and Final Judgment, and unless Defendant is held in contempt of court for not abiding by the terms of this Consent Decree and Final Judgment, Plaintiffs and the Class will not seek any further Attorney Fees and Costs with respect to the Lawsuit. The Attorney Fees and Costs shall be paid by check made payable to the "ACLU of Colorado Foundation" and delivered to Mark Silverstein, Esq. No withholding for any federal, state, or local taxes will be made from the Attorney Fees and Costs, and an IRS Form 1099 will be issued to the ACLU of Colorado Foundation.

G. Final Compromise, No Admissions

All Parties agree and acknowledge: this Consent Decree and Final Judgment constitutes a full and complete compromise of this Lawsuit; and no past or present wrongdoing on the part of anyone will be implied by such commitment or by the negotiations surrounding this Consent Decree and Final Judgment. The terms and conditions of this Consent Decree and Final Judgment do not constitute and will not be asserted to constitute any admission respecting any facts or liability for claims whatsoever with regard to any aspects of this Lawsuit.

H. Binding Effect

This Consent Decree will inure to the benefit of, and be binding upon, all successors, assigns, personal representatives, and heirs (as applicable) of Plaintiffs, of the Class as is anticipated to be reflected in the aforementioned joint motion for conditional approval of the class settlement, and of Defendant.

I. Headings and Recitals

The headings used in this Consent Decree and Final Judgment are for the convenience of the Parties only. As such, these headings will not have any legal effect whatsoever, or in any other way modify the meaning or interpretation of this Consent Decree and Final Judgment.

J. Modification of this Consent Decree and Final Judgment

No provision of this Consent Decree and Final Judgment may be modified except by Order of this Court.

K. Need-Narrowness-Intrusiveness Findings

The Court finds and concludes this Consent Decree and Final Judgment: has no adverse effect on public safety; does not have more than a minimal adverse effect on the operation of the criminal justice system; is narrowly drawn; extends no further than necessary to correct the violation of a Federal right; and is the least intrusive means necessary to correct the violation. See 18 U.S.C. § 3626(a)(1).

Dated and agreed to this 30th day of November, 2020:

s/ Daniel David Williams

Daniel David Williams
Lauren Elizabeth Groth
HUTCHINSON BLACK & COOK, LLC
williams@hbcboulder.com
groth@hbcboulder.com

s/ Mark Silverstein

Mark Silverstein
Rebecca Teitelbaum Wallace
Sara R. Neel
AMERICAN CIVIL LIBERTIES UNION-
DENVER
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s/ Matthew J. Hegarty

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Lewis, Colby Propes, and Chad Hunter***

ON BEHALF OF PLAINTIFFS

ON BEHALF OF DEFENDANT

SO ORDERED THIS ____ DAY OF _____, 20__:

BY THE COURT:

Date

Chief United States District Judge



Modification to Arrest Standards due to COVID 19

The Weld County Jail Will Accept:

1. Charges of a felony 6 and higher
2. New felony charges which are enhanced with VRA/Domestic Violence
3. New misdemeanor charges which are enhanced with VRA/Domestic Violence
4. New misdemeanor charge alleging an arrestee committed either or both of the following:
 - (a) a crime of violence involving the intentional discharge of a firearm in a manner or situation that it posed a risk of injury to another; or
 - (b) a first-degree misdemeanor identical to or substantially similar to at least two other first-degree misdemeanors the same arrestee allegedly committed in the 90 days before the date of the new charge, such that the new charge constitutes at least the arrestee's third such identical or substantially similar first-degree misdemeanor in that period; but only if the Weld County Sheriff first personally determines that the arrestee poses a substantial risk of danger to the community if not booked into the jail facility.
5. Warrants for the charges listed above
6. Protection order violations
7. Probation and Parole Warrants

The Weld County Jail WILL NOT Accept:

1. Municipal warrants or arrests
2. Civil commitments
3. Petty offenses
4. Detox refusals
5. Any arrests that do not meet the above standards

Warrants in the lobby:

If someone comes to the lobby to turn themselves in on agency warrant, the following guidelines will apply:

1. If the warrant is not for the crimes listed under the above standards, the person will be told to turn themselves in at the agency that issued the warrant.
2. If the warrant is listed under the above standards, they will be processed into the jail facility.

**NOTICE OF DETERMINATION OF BEING “MEDICALLY
VULNERABLE” WITH RESPECT TO COVID-19**

Dear _____:

Based on the information you provided during your intake screening, you have been determined at this time to be classified as “medically vulnerable” and to be at a higher risk for experiencing adverse health consequences from contracting COVID-19, if contracted.

This determination may be subject to change if your medical records reveal information materially different from what you provided during your intake screening. If your medical records reveal information materially different from what you provided during your intake screening, you will be issued a supplemental notice indicating you are not in fact at higher risk for experiencing adverse health consequences from contracting COVID-19, if contracted, based on a review of your medical records and a comparison of those records with the information you provided during your intake screening.

INMATE NAME & NUMBER

INTAKE SCREENING DATE

INMATE DATE OF BIRTH

MEDICAL STAFF SIGNATURE



19 NE 50th St.
Oklahoma City, OK 73105
Phone: (405)516-0276
Fax: (405)563-9121

EXHIBIT F-1**CORONAVIRUS SCREENING**

Inmate Name _____ Inmate # _____

TRAVEL HISTORY

1. In the past 30 days. Have you traveled outside of the United States? ____ Yes ____ No
When? _____ Where? _____
2. Does the inmate report a history of traveling to or from Europe or Asia? ____ Yes ____ No

CONTACT HISTORY

3. In the past 30 days, have you had close contact with anyone known to have traveled to Europe or Asia? ____ Yes ____ No
If so, who is person that you had close contact with? _____
When was the contact? _____ How long was contact for? ____ mins/hrs/days
What was your proximity with the other individual during contact? _____ ft. ____ No
4. Have you or anyone you've been in contact with had a laboratory confirm Coronavirus? (The incubation period is 2-14 days) ____ Yes ____ No
5. Do you have fever, cough, shortness of breath, difficulty breathing, persistent pain or pressure on chest, bluish lips or face, chills, shaking with chills, muscle pain, headache, sore throat, newly noticed difficulty with smell or taste, or other symptoms of lower respiratory illness? (If yes, circle symptom(s) they are experiencing) ____ Yes ____ No

Detention Staff Signature

Date

If inmate answers "YES" to the questions 2,3,4, or 5 above, immediately place a mask on him/her and escort to the isolation cell in the medical unit. The nurse is to be notified and will complete the symptoms check list AFTER the inmate has been placed in isolation.

TEMP: _____	Chills: ____Y ____N	Shakes w/Chills: ____y ____N	Red Rash: ____Y ____N
BP: _____	Headache: ____Y ____N	Sore Throat: ____Y ____N	
HR: _____	Shortness of Breath: ____Y ____N	Muscle Pain: ____Y ____N	
O2Sat: _____	New Loss of Taste/Smell: ____Y ____N	Conjunctivitis: ____Y ____N	
Resp: _____	Cough: ____Y ____N	If yes, productive cough: ____Y ____N	

MEDICAL STAFF SIGNATURE

DATE

EXHIBIT A-3

5/18/2020

CorEMR - Preview Patient #BOOKING :: COVID-19 SCREENING FORM, Agency: County, Interviewer: Title Last, First (2020-05-18 05:1...

**COVID-19 SCREENING
FORM****JMS ID:**
DOB:
Age:
Agency:000000
04/05/1989
31
County**Interviewer:**

Title Last, First (05/18/2020 0515)

**Preview Patient
#BOOKING**~~**EXHIBIT F-1**~~**IF PATIENT IS REPORTING POSITIVE SYMPTOMS OR A TEMPERATURE GREATER THAN 100.4, PLEASE NOTIFY SECURITY.**

DOES THE PATIENT HAVE CHRONIC RESPIRATORY ILLNESS? IF YES PLEASE EXPLAIN	☐ Yes ☐ No
	Blood Pressure sys dia Pulse beats per min Respirations breaths per min Temperature F Weight lbs Height -- -- -- SPO2 %
DOES THE PATIENT HAVE ANY OF THE FOLLOWING SYMPTOMS ?	☐ RECENT FEVER (100.4) ☐ SHORTNESS OF BREATH ☐ COUGH ☐ ACHES AND PAINS ☐ NASAL CONGESTION ☐ RUNNY NOSE ☐ SORE THROAT ☐ DIARRHEA ☐ DENIES

NAME: _____ DOB _____ JID# _____

MEDICAL VULNERABILITY SCREENING FORM

	PER CDC GUIDELINES
	65 YEARS OF AGE OR OLDER
	CHRONIC KIDNEY DISEASE
	COPD
	HEART CONDITIONS (HEART FAILURE, CAD, CARDIOMYOPATHIES
	IMMUNOCOMPROMISED STATE
	OBESITY BMI >30
	PREGANCY
	SICK CELL DISEASE
	TYPE 2 DIABETES
	LIVER DISEASE
	ASTHMA MODERATE TO SEVERE*
	CEREBROVASCULAR DISEASE*
	CYSTIC FIBROSIS *
	HYPERTENSION *
	NEUROLOGIC CONDITIONS (DEMENTIA)*
	PULMONARY FIBROSIS *
	THALASSEMIA (A TYPE OF BLOOD DISORDER)*
	TYPE 1 DIABETES*
	CANCER*
	SMOKING*

****THIS FORM IS FOR DATA COLLECTION PURPOSES ONLY. IT WILL NOT BE A
PERMANENT PART OF THE MEDICAL RECORD****

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT
CONCERNING PROTECTION OF MEDICALLY VULNERABLE PERSONS IN THE
WELD COUNTY JAIL FROM COVID-19**

INTRODUCTION AND BACKGROUND

This Notice is to inform you of a proposed settlement of a class action lawsuit to protect medically vulnerable persons held in the Weld County Jail (“WCJ”) from COVID-19. The federal District Court for Colorado held a preliminary injunction hearing in this matter on April 30, 2020. By Order dated May 11, 2020, the court entered a detailed preliminary injunction setting forth steps WCJ was required to take to identify and to protect medically vulnerable inmates at the Weld County Jail. The preliminary injunction has been extended multiple times, most recently through December 9, 2020.

Counsel for the proposed class and counsel for the Weld County Sheriff have spent several months attempting to reach an agreement to resolve this lawsuit. They have reached a proposed settlement agreement in the form of a proposed Consent Decree and Final Judgment, which is described below. The Court must decide whether to approve the Consent Decree. Before doing so, you have the opportunity to submit any objection to the Court. Please be advised that if you fail to strictly comply with the procedures and deadline for filing objections to the proposed settlement, you will lose any opportunity to object to any aspect of the proposed Consent Decree.

PROPOSED CONSENT DECREE

To resolve this dispute, the parties have agreed to request that the Court enter the attached proposed Consent Decree as an Order of the Federal District Court. A summary of the key terms of the proposed Consent Decree is as follows:

- 1) For purposes of the proposed Consent Decree, the designation of who is “medically vulnerable” is defined in line with U.S. Centers for Disease Control and Prevention (“CDC”) guidance current as of the date the proposed Consent Decree and Final Judgment was submitted to the Court, yet subject to modification if the CDC’s guidance changes;
- 2) WCJ will identify medically vulnerable inmates during booking and intake, including screening for specific medical conditions set forth in the proposed Consent Decree, in English or Spanish at each Class member’s election. Persons identified as medically vulnerable will be protected from exposure to others during the remainder of the intake process to the extent possible;
- 3) WCJ will attempt to single-cell medically vulnerable inmates in the intake/transition units consistent with CDC guidelines, and the Consent Decree contains specific procedures to minimize exposure to others if single cells are not available based on the population size of WCJ;

- 4) WCJ will continue to limit exposure of medically vulnerable persons in the general jail population, including with respect to cell assignments and with respect to time spent outside of cells;
- 5) WCJ will permit the maximum amount of daily out-of-cell time for inmates consistent with social distancing protocols and allowable cohorting;
- 6) WCJ will medically isolate COVID-19-positive inmates in an isolation unit consistent with CDC guidelines and ensure that medical isolation for COVID-19 inmates is in a non-punitive environment, allowing access to personal and recreational items which can be effectively sanitized;
- 7) WCJ will continue stringent enhanced sanitation procedures throughout the jail to help control the spread of COVID-19;
- 8) WCJ will distribute masks, with the option to provide two cloth masks per inmate for non-medically vulnerable persons, and disposable masks for medically vulnerable persons, with the disposable masks to be replaced at the frequency consistent with CDC guidelines and manufacturer recommendations;
- 9) To help limit the spread of COVID-19 in the community outside of the jail, inmates will be given masks to take with them upon release from the WCJ;
- 10) Medically vulnerable inmates will be regularly monitored by healthcare professionals for COVID-19 symptoms;
- 11) WCJ will provide testing for inmates for COVID-19 consistent with CDC guidelines;
- 12) Remote visitation opportunities will be continued;
- 13) Inmates will receive regular information and updates regarding COVID-19 prevention;
- 14) Persons identified as “medically vulnerable” at intake will be provided with a document stating that they have been so designated;
- 15) Defendant will maintain modified arrest standards, varying somewhat depending on the status of an ongoing jail construction project, that will remain in place for the duration of the COVID-19 emergency. These modified arrest standards, which are listed as an attachment to the proposed Consent Decree, restrict who WCJ will accept, by category of offense;
- 16) On a regular basis, Defendant will advise chiefs of police in Weld County to be judicious with jail space and to minimize the scope of arrestees in their jurisdictions and maximize the number of persons subject to arrest who are issued summonses or personal recognizance bonds in their jurisdictions;

- 17) Every two weeks, WCJ will provide the Chief Judge for the Nineteenth Judicial District of Colorado and the Colorado Division of Adult Parole a list of all inmates housed at WCJ, with a request to the Chief Judge for a docket review for potential judicial action;
- 18) Defendant will comply with robust data reporting requirements to Plaintiffs' counsel, so as to allow class counsel to monitor the performance of WCJ under the Consent Decree. Plaintiffs, and Class counsel when acting on behalf of class members, agree not to circumvent these agreed data reporting requirements by making additional requests under the Colorado Open Records Act or Colorado Criminal Justice Records Act relating to WCJ's COVID-19 response or population statistics;
- 19) Plaintiffs and the Class will release claims for injunctive and declaratory relief arising from COVID-19 at the WCJ, and associated costs and attorney's fees, accruing through the date of the Consent Decree. The release does not include claims concerning conduct that occurs after the date the Consent Decree is entered, and it does not include any money damages claims;
- 20) The duration of the Consent Decree is through the time that the Executive Order of the Governor of the State of Colorado declaring a statewide emergency for COVID-19 expires and is not renewed or replaced with an equivalent declaration;
- 21) Defendant will pay counsel for Plaintiffs \$122,387.60 for attorney's fees and costs; and
- 22) The parties agree that the Consent Decree is entered into for purposes of settlement, and should not be construed as an admission of wrongdoing.

REASONS FOR PROPOSING COURT APPROVAL OF THE CONSENT DECREE

All parties believe this proposed Consent Decree is fair and reasonable. It is the result of a lengthy negotiation between the two sides. Particularly in light of the risks of prevailing if the case had gone to trial, and the considerable discretion the Court would have had to decide what to include in any permanent injunction, Plaintiffs' counsel believes the relief described above exceeds what they likely could have secured on behalf of the class had the case going to trial.

PROCEDURE AND DEADLINES TO OBJECT TO THE CONSENT DECREE

The Court has set a hearing to consider whether to approve the proposed Consent Decree. That hearing is set to occur on December ____, 2020 at ____ at the U.S. District Court for the District of Colorado.

If you agree with the proposed Consent Decree, or do not wish to object to it, you are not required to take any action at all.

If you wish to object to the Consent Decree, you must do so in writing, with any written objections submitted no later than _____.

Your written objections should be addressed as follows:

Clerk of the Court
RE: *Thomas Carranza, et al. v. Steven Reams*, No: 20-cv-977-PAB-SKC
U.S. District Court for the District of Colorado
Alfred A. Arraj Courthouse
901 19th Street
Denver, CO 80294

ADDITIONAL INFORMATION

Should you have questions or seek additional information regarding this matter, you are directed to contact counsel for Plaintiffs as follows:

ACLU of Colorado
Re: Carranza Class Action
303 17th Ave., Suite 350
Denver, CO 80203