

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

KEITH SETH, *et al.*,
Individually and on behalf of a class of similarly
situated persons
Plaintiffs-Petitioners,

v.

MARY LOU MCDONOUGH,
In her official capacity as Director of the Prince
George's County Department of Corrections
Defendant-Respondent.

No. 8:20-cv-1028-PX

**Private Settlement
Agreement and Release**

This **PRIVATE SETTLEMENT AGREEMENT AND RELEASE** is made and entered into as of the Effective Date by Dereck Vaughn-Clark and Dominique Williams, who are people currently incarcerated at the Prince George's County Department of Corrections and are being substituted simultaneously with this Agreement for Plaintiffs KEITH SETH, DAVID SMITH, MARIO BURCH, and JOHN DOES 1-5, and Defendant CORENNE LABBÉ, in her official capacity as Director of the Prince George's County Department of Corrections. The parties covenant and agree that they have entered into this Private Agreement pursuant to 18 U.S.C. § 3626(c)(2); and, as such, nothing contained in this Agreement reflects any agreement by the parties that the provisions of this agreement comply with the requirements set forth in 18 U.S.C. § 3626(a)(1) and the Court shall not make any findings consistent with 18 U.S.C. § 3626(a)(1). Pursuant to 18 U.S.C. § 3626(c)(2), the federal court shall only retain jurisdiction over this Agreement for the purposes of reinstatement and/or dispute resolution as outlined in Section III.U.

I. DEFINITIONS.

- A. "Agreement" refers to this Private Settlement Agreement and Release.
- B. "CDC" means the Centers for Disease Control and Prevention within the United States

Department of Health and Human Services.

C. “CDC Guidance” refers to CDC’s guidance for correctional facilities originally published on March 23, 2020, and last updated on June 9, 2021.

D. “Cohort” refers to a group of detainees who are housed together at the Jail and have been assigned to recreate at the same time.

E. “County” refers to Prince George’s County, Maryland.

F. “Court” refers to the United States District Court for the District of Maryland, along with the Hon. Paula Xinis or her successor.

G. “COVID-19” refers to the disease caused by the 2019 novel coronavirus SARS- COV-2.

H. “Detainee(s)” refers to the individuals in PGCDOC’s custody at the Jail whether as pretrial detainees or post-conviction inmates.

I. “Director” refers to Defendant Corenne Labbé, in her official capacity as the Director of the Prince George’s County Department of Corrections, or her successor, and the individuals under her direct supervision.

J. “EPA” refers to the United States Environmental Protection Agency.

K. “Emergency” refers to any circumstance where there is an actual or potential threat to the safety or security of PGCDOC, or to the safety of the staff, detainees, or other persons at the Jail.

L. “Jail” refers to the County’s detention facility operated by PGCDOC.

M. “Lawsuit” refers to the above-styled case of Keith Seth, et al. v. Mary Lou McDonough, Case No. 8:20-cv-01028-PX, in the United States District for the District of Maryland.

N. “Party” refers to Keith Seth, David Smith, Mario Burch, John Does No. 1–5, Substituted Plaintiffs, or the Director; and “Parties” refers to Keith Seth, David Smith, Mario Burch, John Does No. 1–5, Substituted Plaintiffs, and the Director.

O. “PGCDOC” refers to the Prince George’s County Department of Corrections.

P. “Plaintiffs” refers to Dereck Vaughn-Clark, Dominique Williams, Keith Seth, David Smith, Mario Burch, and John Does No. 1–5.

Q. “Substituted Plaintiffs” refers to Dereck Vaughn-Clark and Dominique Williams, who are being substituted for Plaintiffs in this action for the purposes of settlement.

R. “Protective Order” refers to the Protective Order entered in this Lawsuit on June 19, 2020, located at docket entry number 108.

II. RECITALS.

A. WHEREAS, Plaintiffs filed the Lawsuit on April 21, 2020, alleging the inadequacy of the Director’s response to the COVID-19 pandemic at the Jail;

B. WHEREAS, the Director and her predecessor denied Plaintiffs’ allegations and moved to dismiss Plaintiffs’ claims;

C. WHEREAS, the increased availability of COVID-19 testing kits allowed the Director to conduct mass testing of detainees at the Jail;

D. WHEREAS, the increased availability of the COVID-19 vaccine allowed the Director to offer the vaccine to every detainee within the Jail;

E. WHEREAS, the Parties mediated their dispute in a good-faith effort to resolve the Lawsuit;

F. WHEREAS, the Parties desire to avoid the burdens and risks of further litigation and, for this reason, agreed to resolve the Lawsuit on the terms and subject to the conditions set forth in this Agreement;

G. WHEREAS, this Agreement resolves all claims asserted and relief sought by the Plaintiffs in the Lawsuit; and

H. WHEREAS, the Parties intend that this Agreement become effective on the Effective Date.

III. TERMS AND CONDITIONS.

NOW THEREFORE, in exchange for the mutual promises contained herein, and for other valuable consideration, the Parties hereby agree as follows:

A. General Provisions. The following general provisions shall apply to this Agreement:

1. Nothing in this Agreement shall prevent the Director from or oblige the Director to take additional steps to provide for the health and safety of detainees at the Jail with respect to COVID-19 or from taking any actions necessary to ensure the safety and security of detainees, persons working or volunteering in the Jail.

2. The provisions of this Agreement may be temporarily suspended or modified if the Director or her designees determine that an Emergency exists at the Jail. Within 48 hours of such a determination, the Director's counsel shall notify Plaintiffs' counsel of the date of the emergency, the nature of the emergency, which provisions of the Agreement have been temporarily suspended or modified, and when those provisions may be reinstated.

3. This Agreement and all obligations pursuant to this Agreement solely concern and relate to the Director's response to COVID-19, testing and other screening for COVID-19, and medical care for detainees who test positive for COVID-19. Nothing in this Agreement shall permit Plaintiffs' counsel or Plaintiffs' expert (Dr. Carlos Franco-Paredes) to monitor, review, investigate, inquire into, or otherwise evaluate any aspect of medical care or mental-health care provided by PGCDOC or its contractor outside of the expressly enumerated terms and conditions of this Agreement.

B. Effective Date. The Effective Date of this Agreement shall be the date of final execution of this Agreement by the Director and the Substituted Plaintiffs.

C. Termination. This Agreement and all obligations pursuant to this Agreement shall terminate one hundred and twenty (120) days from the Effective Date. In the event that the dispute resolution procedure outlined in Section III.U of this Agreement is invoked, Magistrate Judge

Timothy Sullivan will make a determination in the context of mediation whether the dispute involves a material breach of the Settlement Agreement, as defined pursuant to Maryland state law, that poses an unreasonable risk to the health and safety of the detainees at the Jail requiring the extension of this Agreement. Under no circumstances whatsoever shall this Agreement be extended beyond one hundred and eighty (180) days from the Effective Date.

D. Testing. The Parties agree to the following terms with respect to COVID-19 testing of detainees:

1. The Director shall conduct testing at least once per month of the following categories of detainees:

- i. Any detainee who is sixty-five (65) years or older;
- ii. Any detainee who has been diagnosed with any of the following conditions:
 - (A) chronic lung disease, including moderate to severe asthma, COPD, emphysema, chronic bronchitis, idiopathic pulmonary fibrosis, and/or cystic fibrosis;
 - (B) immunocompromised status, including prolonged use of corticosteroids, using immunosuppressive medication, and/or having an immune deficiency;
 - (C) severe obesity (BMI of 40 or higher);
 - (D) diabetes mellitus Type I or II;
 - (E) gestational diabetes mellitus;
 - (F) chronic kidney disease on dialysis;
 - (G) chronic liver diseases or cirrhosis of the liver; and/or
 - (H) serious heart conditions, including congestive heart failure, coronary artery disease, congenital heart disease, cardiomyopathy, and/or pulmonary hypertension; and
- iii. Any detainee enrolled in PGCDoc's Chronic Care Clinic program.

2. At intake, the Director shall both screen and test each incoming detainee for

COVID-19.

3. The Director shall assign each detainee to a cohort. The Director shall randomly test ten percent (10%) of each cohort for COVID-19 at least once per month.

4. In the event that any detainee in a single cohort tests positive for COVID- 19, the Director shall test all detainees in the same cohort for COVID-19 within an appropriate time-period to detect additional infections, consistent with CDC Guidance. Furthermore, if during this cohort-wide testing another detainee in the cohort tests positive for COVID-19, then the Director shall test the entire housing unit for COVID-19 within an appropriate time-period to detect additional infections, consistent with CDC Guidance.

E. Quarantining. The Director shall adhere to CDC Guidance with respect to quarantining detainees.

F. Screening. The Parties agree to the following terms with respect to screening of detainees:

1. The Director shall test any detainee for COVID-19 for whom testing is clinically indicated consistent with CDC Guidance.

2. Within seven (7) days of the Effective Date, Plaintiffs' counsel shall submit to Director's counsel proposed signage outlining critical information for detainees related to COVID-19, including but not limited to information about vaccination. Director's counsel shall propose any changes or revisions to Plaintiffs' counsel within seven (7) days after receipt of such signage. Plaintiffs' counsel shall then produce the signage, approved by the Director, to Director's counsel within three (3) days. The Director shall then post the signage in the Jail within seven (7) days. The Parties agree that such signage shall clearly communicate important information for detainees derived from the CDC Guidance in a manner understandable by detainees, including Spanish-speaking and illiterate detainees. Plaintiffs' counsel will produce fresh copies of the signage throughout the term of the Agreement as necessary; Director's counsel will ensure that each round of signage is posted

within seven (7) days of receipt by the Director's counsel.

3. The Director shall continue to offer detainees access to the sick call process, without any co-pay for requests for medical care for symptoms of COVID-19.

4. The Director's medical staff shall collect and triage sick call requests at least once every twenty-four (24) hours. Subject to clinical judgment and the need for responding to urgent and emergent medical needs, the Director's medical staff will prioritize responding to sick call requests requesting care for symptoms of COVID-19. Any evaluation of the Director's compliance with this provision is circumscribed by Section III.A.3 above.

G. Medical Isolation. The Parties agree to the following terms with respect to medical isolation:

1. The Director shall adhere to CDC Guidance with respect to medical isolation of detainees.

2. In the event that any detainee develops a severe illness due to COVID-19, which requires specialized or emergency care that the Director's medical staff cannot provide, the Director's medical staff shall initiate the process of transporting the detainee to a hospital to receive the necessary care without undue delay.

3. Any detainee in medical isolation will be regularly seen by medical staff and monitored for symptoms of COVID-19.

4. The Director shall distribute to each detainee in medical isolation at the Jail a hygiene kit that includes soap, a toothbrush, toothpaste, and deodorant.

5. Detainees in medical isolation at the Jail will receive a mental-health assessment by a mental-health provider upon request, and mental health treatment will be provided if indicated, including appropriate prescribed medications and access to one-on-one individualized psychotherapy as indicated.

6. The Director shall ensure that medical isolation cells occupied by any COVID-

19 positive detainee are cleaned and disinfected consistent with CDC Guidance before being occupied by another detainee.

H. Hygiene. The Parties agree to the following provisions with respect to hygiene at the Jail:

1. The Director shall provide each detainee with a hygiene kit, including a cup, soap, a toothbrush, toothpaste, and deodorant at Intake.

2. The Director shall provide additional supplies of soap, toothpaste, and tissue every two (2) weeks, and upon request as needed, but subject to the discretion of the Director's staff to limit distribution of hygiene products to specific detainees to prevent stockpiling or other documented security concerns.

3. The Director shall ensure that detainees receive access to laundry services for clothing and bed linens on a weekly basis.

4. The Director shall continue to use and make available cleaning products approved by the EPA for use against COVID-19, and shall use them according to the EPA instructions for effectiveness against COVID-19.

5. The Director shall continue to provide the following cleaning supplies to all housing units weekly in adequate quantities to ensure satisfactory cleaning and disinfecting practices: Spray Nine (or other approved cleaner), bleach spray bottles, sanitation wipes (when available), paper towels, toilet paper, gloves, and hand-sanitizer (for the officer's station). The Director shall provide detainees access to these items to utilize during recreation time, and Spray Nine (or other approved cleaner) and paper towels to clean phones used by detainees between uses.

6. The Director shall ensure that a professional contractor cleans the Jail, including the housing units' dayroom areas, the cells of detainees who are COVID-19 positive, Kitchen/Officer's Dining Room, Processing areas, Medical Unit, and Reception/Visitation area on a regular basis.

7. Detainees shall be responsible for cleaning their own cells except when the cell was occupied by a detainee who tested positive for COVID-19, in which case the Director shall clean and disinfect the cell in accordance with CDC Guidance.

I. Social Distancing. The Parties agree to the following provisions with respect to social distancing at the Jail:

1. The Director shall continue to maintain social distancing signs in English and Spanish over the telephones used by detainees in the housing units at the Jail as a reminder to the detainees to keep at least six (6) feet apart.

2. The Director shall continue to maintain markers on the dayroom floors of each housing unit to provide detainees with locations to stand to maintain six (6) feet separation during medical call out for medication.

J. Personal Protective Equipment. The Director shall continue to provide detainees two (2) surgical facemasks, as defined by CDC Guidance, per week, or one (1) such facemask every three (3) to five (5) days. The Director shall also provide a replacement facemask if a facemask becomes damaged or soiled.

K. Sick Call. The Director shall provide sick call request forms to any detainee who requests such a form. Plaintiffs' expert shall not request any documents from the Director with regard to this provision.

L. Out-of-Cell Time. The Director will make all reasonable efforts to ensure that the detainees at the Jail receive at least three (3) hours of out-of-cell time each day and will communicate the same to custody staff. The Director cannot guarantee that detainees will receive three (3) hours of out-of-cell time per day.

M. Vaccination. The Director shall ensure that all detainees are offered COVID-19 vaccinations. All unvaccinated detainees, including those who have previously declined a COVID-19 vaccine, will be provided with information on the COVID-19 vaccination program and an

opportunity to register for vaccination during the daily temperature checks in the housing unit. Medical staff will coordinate the vaccination of those registered for the COVID-19 vaccination program in the housing units and vaccination of registered detainees will be conducted on a weekly basis. The Parties acknowledge that the medical staff cannot maintain sight or sound confidentiality in the housing units with respect to the administration of any dosages of vaccines. All such offers of vaccination shall be documented.

N. Phone Calls. The Parties agree to the following provisions with respect to phone calls at the Jail:

1. The Director shall continue to provide three (3) free 10-minute phone calls per week to each detainee.

2. The Director shall continue to provide free legal calls to each detainee, and the audio feed of these calls shall not be monitored or recorded.

3. The Director shall take reasonable steps to ensure that all phones in the Jail's housing units are functional. At intervals not to exceed once a month, Plaintiffs' counsel may inform PGCDOC, by and through the Director's counsel or another designated individual, regarding any phones in the Jail's housing units which Plaintiffs contend are not functioning. Within twenty-one (21) days of receiving Plaintiffs' report, the Director, by and through Defendant's counsel or another designated official, shall provide Plaintiffs' counsel an update on the status of repairing the phones.

4. The Director shall designate an appropriate member of PGCDOC's staff for detainees' attorneys to contact to facilitate reasonably prompt communication with their clients. If Plaintiffs' counsel seek to communicate via telephone with any detainee at the Jail, Plaintiffs' counsel must submit the request via an email to the designated point of contact on PGCDOC's staff, as set forth in this Section III.N.4. Plaintiffs' counsel must copy Shelley L. Johnson, or another designated counsel for the Director, on the email to PGCDOC's designated point of contact. A member of the Director's staff will inform the detainee that Plaintiffs' counsel requested a telephone call with the

detainee and will provide the detainee with the telephone number for Plaintiffs' counsel. PGCDOC currently maintains telephone numbers for Plaintiffs' counsel in its list of approved telephone numbers and will not record or charge detainees money for phone calls to those numbers. If Plaintiffs' counsel request to add additional phone numbers for detainees to call, PGCDOC will consider each request consistent with its security procedures for verifying phone numbers. Any phone calls with Plaintiffs' counsel in this Lawsuit shall not count toward that detainee's allotment of three (3) free phone calls per week pursuant to Section III.N.1 above.

O. Reporting and Inspection. The Parties agree to the following provisions for reporting on compliance with the terms of this Agreement:

1. On a monthly basis, the Director shall produce the following documentation to Plaintiffs' counsel: COVID-19 Tracking/Isolation Reports; Vaccination Logs; COVID-19 Testing Logs; and Out-of-Cell Time Logs showing the out-of-cell time allowed for each cohort. The documentation to be produced pursuant to this provision shall be provided to Plaintiffs' counsel within ten (10) business days of the end of the month. The Director shall begin producing documentation pursuant to this provision within ten (10) business days of the end of the first full month after the Effective Date.

2. On a monthly basis, beginning with the first full month after the Effective Date, the Director shall allow a physical inspection at the Jail to be conducted by Plaintiffs' expert, Dr. Carlos Franco-Paredes. Within ten (10) days of the Effective Date, and prior to visiting the Jail, Dr. Franco-Paredes shall sign a confidentiality and non-disclosure agreement, approved by the Director's counsel, acknowledging that he will comply with the Protective Order with respect to any information and documentation provided by the Director or related to any inspection at the Jail. Any inspection at the Jail conducted by Dr. Franco-Paredes shall be subject to the following provisions:

- i. At least forty-eight (48) hours prior to any inspection, Plaintiffs' counsel shall provide written notice of the date for an inspection to the Director's counsel. The Director's counsel may provide advance notice of the inspection to one person on PGCDOC's staff for the

purpose of ensuring that Dr. Franco-Paredes has an escort at the Jail. Anyone with prior knowledge of the inspection shall hold that information in strict confidence. No one other than Plaintiffs' counsel, Dr. Franco-Paredes, the Director's counsel, and the member of PGCDOC's staff notified by the Director's counsel shall be given any notice of a monthly inspection prior to its occurrence.

- ii. Neither Plaintiffs' counsel nor Dr. Franco-Paredes may notify or disclose to any detainee at the Jail (including any Plaintiff) the date of the monthly inspection in advance of any such monthly inspection pursuant to this Agreement.
- iii. The inspection shall comply with the Protective Order.
- iv. The monthly inspection by Dr. Franco-Paredes must occur between 9:00 a.m. and 5:00 p.m. EST on a single business day.
- v. Dr. Franco-Paredes may only enter the Jail once for any monthly inspection. Stated differently, once Dr. Franco-Paredes enters the Jail to begin a monthly inspection, his exit from the Jail will conclude that inspection.
- vi. Counsel for the Director and up to one (1) attorney for Plaintiffs may accompany Dr. Franco-Paredes on any monthly inspection to the Jail. Neither counsel for the Director nor counsel for Plaintiffs may interfere with Dr. Franco-Paredes's inspection except to the extent necessary to ensure compliance with this Agreement.
- vii. At least fourteen (14) days prior to any inspection visit to Jail, Plaintiffs' counsel shall provide the Director's counsel with written documentation confirming Dr. Franco-Paredes and any Plaintiffs' counsel who will accompany his inspection visit(s) have been fully vaccinated with the COVID-19 vaccination.
- viii. Dr. Franco-Paredes and Plaintiffs' counsel shall bring a current, valid driver's license to the Jail for identification purposes.
- ix. Dr. Franco-Paredes and Plaintiffs' counsel shall comply with the same rules and requirements as other visitors to the Jail, including rules and requirements concerning searches and COVID-19.
- x. Upon arrival at the Jail and for the duration of any inspection visit, Dr. Franco-Paredes and Plaintiffs' counsel shall wear any personal protective equipment ("PPE") required by the Director.
- xi. Dr. Franco-Paredes and Plaintiffs' counsel shall maintain social distancing (i.e., 6 feet apart from other individuals) to the greatest extent possible during the inspection.
- xii. Dr. Franco-Paredes and Plaintiffs' counsel shall not bring a cell phone or any other audio or visual recording device into the Jail.

- xiii. A security escort will accompany Dr. Franco-Paredes and Plaintiffs' counsel throughout any inspection visit to the Jail.
- xiv. During the monthly inspection, Dr. Franco-Paredes may interview detainees in a location that permits his escort or other PGCDoc staff to maintain visual supervision of the detainee, but not to hear the interview. No detainee will be required or forced to participate in an interview with Dr. Franco-Paredes.
- xv. Subject to institutional, operational, and security concerns as determined by the Director or her designee, Dr. Franco-Paredes will be escorted anywhere in the Jail that he requests, excluding administrative offices.
- xvi. Dr. Franco-Paredes will not interview any member of the medical, mental-health, or security staff at the Jail or any employee, staff member, or volunteer of the County, PGCDoc, or contractor for the County or PGCDoc.
- xvii. Plaintiffs' counsel will not interview or speak with any detainee, any member of the medical, mental-health, or security staff at the Jail or any employee, staff member, or volunteer of the County, PGCDoc, or contractor for the County or PGCDoc. Plaintiffs' counsel will direct any questions arising during an inspection to the Director's counsel. However, notwithstanding anything else in this provision, should any detainee indicate a desire to speak with Plaintiffs' counsel during a site visit, Plaintiffs' counsel may provide the detainee with counsel's contact information and/or ask the detainee for their full name such that counsel may contact the detainee at a later date. Furthermore, this provision does not circumscribe Plaintiffs' counsel's ability to schedule calls with any detainee as per Section III.N.4 or visit any detainee during normal attorney visiting hours pursuant to the protocols for attorney visits.
- xviii. Dr. Franco-Paredes will not request or be provided any documents during his inspection of the facility.
- xix. During the course of any inspection at the Jail, Dr. Franco-Paredes shall not provide or engage in any medical, psychiatric, and/or other diagnosis, procedure, and/or treatment of any kind or engage in any other conduct that constitutes the unauthorized practice of medicine, psychiatry, counseling, and/or other medical or mental-health services in the state of Maryland.
- xx. Dr. Franco-Paredes and Plaintiffs' counsel shall not interfere with the operations of the medical, mental-health, and/or security staff during the course of any inspection at the Jail.
- xxi. Dr. Franco-Paredes and Plaintiffs' counsel shall comply with all security procedures and protocols during the course of any inspection at the Jail.

xxii. The Director reserves the right to terminate any inspection at the Jail in the event that Dr. Franco-Paredes or Plaintiffs' counsel fail to comply with the provisions of this Section III.O.2 of the Agreement.

3. In the case that Dr. Franco-Paredes becomes unavailable to fulfill his duties pursuant to this Agreement due to death or incapacitation, Plaintiffs' counsel shall promptly notify the Director's counsel, provide documentation of his unavailability, and propose an alternate to fulfill the remainder of Dr. Franco-Paredes's duties. Any disputes arising under this provision shall be governed by the dispute resolution procedure outlined in Section III.U of this Agreement.

4. The duties, obligations, and requirements related to inspection and reporting provided for in this Section III.O of this Agreement shall cease upon the expiration or termination of this Agreement.

P. General Release of Claims. Substituted Plaintiffs, for themselves and their spouses, heirs, executors, administrators, agents, representatives, successors, and assigns, unconditionally and forever release, acquit, and discharge the Director, in her official and individual capacities (as applicable), the County, and PGCDOC and their past, present, and future agents, affiliates, attorneys, contractors, employees, contractors' employees, insurers, managers, members, parents, predecessors, servants, subsidiaries, successors, and vendors (collectively, the "Released Parties") of and from any and all actions, causes of action, claims, complaints, demands, liabilities, relief, and rights, whatsoever, whether now known or unknown, suspected or claimed, matured or unmatured, contingent or non-contingent, which Substituted Plaintiffs now have, or which may hereafter accrue, against the Released Parties, based on, arising out of, or relating to the Director's past COVID-19 response policy, or the COVID-19 response policy contained in this Agreement, and any claims for injunctive and declaratory relief asserted or that could have been asserted in the Lawsuit.

Q. Covenant Not to Sue. Substituted Plaintiffs agree, promise, and covenant that neither they nor any person, organization, or other entity acting on their behalf will charge, claim, file, sue, or cause or permit to be charged, claimed, or filed any action for monetary and/or equitable relief

(including, for example, certiorari, declaratory, injunctive, mandamus, or other relief) before any arbitration association, executive, judicial, or legislative tribunal or court, or other adjudicative body, against the Director, in her official and individual capacities (as applicable), the County, and PGCDOC and their past, present, and future agents, affiliates, attorneys, contractors, employees, contractors' employees, insurers, managers, members, parents, predecessors, servants, subsidiaries, successors, and vendors involving any matter involving and based on any conditions, incidents, and/or occurrences alleged or claims made in this Lawsuit occurring in the past up to the Effective Date of this Agreement.

R. No Admission of Liability. The Director expressly reaffirms her position that the County's and PGCDOC's policies and procedures do not violate and have not violated the constitutional rights of any detainee. The Director maintains and continues to maintain that PGCDOC and the County have consistently acted in accordance with applicable law and continues to vigorously deny all allegations asserted by Plaintiffs in the Lawsuit. The Director believes that this Agreement is part of a compromise and therefore involves activities and changes to policies and procedures that are not mandated by, and which go beyond, the requirements of any substantive and procedural components of the United States Constitution. The Director therefore reserves the right to raise the propriety and necessity of any term or provision in this Agreement at any time, including in any proceeding to enforce this Agreement or any proceeding for modification of or relief from this Agreement. Neither this Agreement, nor any of its terms or provisions, shall be construed as an admission by the Director of any liability or wrongdoing whatsoever, nor is this Agreement a finding of the validity of any claim asserted or relief sought in the Lawsuit or of any wrongdoing by the Director. This Agreement shall not be used or construed as an admission, concession, or presumption or inference of any fault, liability, or wrongdoing by any person, business entity, or governmental entity, including the Director. Neither this Agreement, the fact of settlement and the settlement proceedings, the settlement negotiations, nor any related statement or document shall be offered or

received in evidence as an admission, concession, or presumption or inference against the Director, PGCDoc, or the County in the Lawsuit or any other legal proceeding, except in any subsequent proceeding to enforce this Agreement consistent with Section III.U or in any subsequent action by or against the Director or PGCDoc to support a defense of *res judicata*, collateral estoppel, release, or other theory of claim preclusion, issue preclusion, or similar defense.

S. Prison Litigation Reform Act. This is a private settlement agreement in accordance with the Prison Litigation Reform Act, 18 U.S.C. § 3626(c), and the Court shall not make any findings related to the propriety of any term or condition of this Agreement. This Agreement is not a consent decree.

T. Stipulated Dismissal. Within ten (10) days after all of the Parties have signed this Agreement, the Parties, through their respective counsel, shall execute and file with the Court a Fed. R. Civ. P. 41 Stipulated Dismissal of this Lawsuit with prejudice with regard to Plaintiffs' claims against the Director and with costs taxed as paid.

U. Dispute Resolution and Enforcement. If any Party has reasonable grounds to believe that a dispute exists relating to one (1) or more provisions of this Agreement, then such Party will notify the other Parties in writing. The notice must identify, with particularity, the basis of the claim that the other Parties are not in substantial compliance with the Agreement and the specific provision(s) of this Agreement that are implicated. The Parties shall engage in good-faith negotiations and attempt to resolve the dispute. If the Parties cannot resolve the dispute within ten (10) days of the written notification, Magistrate Judge Timothy Sullivan of the United States District Court for the District of Maryland, or another mutually agreeable mediator, will hold a mediation conference to attempt to resolve the dispute. The mediation conference shall be held as soon as practicable considering the availability of the mediator, counsel, and the Parties. If the Parties are unable to resolve the dispute through mediation, the Parties may seek relief available under 18 U.S.C. § 3626(c)(2), including moving the Court for reinstatement of the Lawsuit, or instituting an action for

breach of contract in state court in Prince George's County, Maryland. An action to enforce this Agreement does not include any action for damages, attorneys' fees, or costs that exceed that permitted under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(d). The Parties consent to Magistrate Judge Sullivan's authority to mediate disputes between the Parties with respect to this Agreement.

V. Attorneys' Fees. The Parties agree that Plaintiffs are not prevailing parties in the Lawsuit within the meaning of 42 U.S.C. § 1988, and Plaintiffs hereby expressly and voluntarily waive any right, claim, or entitlement to prevailing party status in this action. Substituted Plaintiffs and their counsel expressly warrant and agree that they shall not make any statement of any kind claiming or indicating that Plaintiffs were prevailing parties in this action within the meaning of 42 U.S.C. § 1988. Should the Director or her counsel believe Substituted Plaintiffs or their counsel to have made such a statement, Magistrate Judge Timothy Sullivan will make a determination in the context of mediation whether the dispute involves a material breach of the Settlement Agreement, as defined pursuant to Maryland state law. If Judge Sullivan determines that Plaintiffs materially breached this provision of the Agreement, he may determine an appropriate sanction, which may include a specific amount of attorneys' fees and expenses to be paid to the Director. Any such amount, if not paid within thirty (30) days, may be sought by the Director through an action filed in state court. This Agreement is part of a compromise, and to resolve the Parties' dispute, and for complete satisfaction and release of the claims asserted and relief sought in the Lawsuit (including any claim for attorneys' fees and costs under 42 U.S.C. § 1988), the Director shall remit to counsel for Plaintiffs payment in the amount of One Hundred Thousand Dollars (\$100,000), which shall constitute payment for any and all attorneys' fees and expenses incurred, charged, and/or otherwise generated by counsel for the Plaintiffs from the inception of the Lawsuit through the final conclusion of this matter. The Parties further agree that the above-referenced sum shall be paid by the Director no later than thirty (30) days after the Effective Date and that such payment shall be made payable to the "Civil Rights

Corps.” The Parties acknowledge and agree that the payment reflected in this Section III.V constitutes payment in full for any and all attorneys’ fees and expenses claimed by Plaintiffs, Plaintiffs’ counsel, and Plaintiffs’ experts, and/or any other Party to the Lawsuit for the claims resolved herein, including any fees and/or expenses related to monitoring, dispute resolution, and the enforcement of this Agreement. Plaintiffs and their respective counsel and experts hereby voluntarily, completely, and unconditionally waive any and all right to seek the recovery of any monies of any kind from the Director for any and all attorneys’ fees and/or expenses incurred, charged, and/or otherwise generated by counsel for the Plaintiffs after the date of this Agreement for the claims resolved herein. Moreover, nothing in this Agreement requires the Director to remit payment to any Party for the recovery of attorneys’ fees inconsistent with the limitations imposed under the Prison Litigation Reform Act or the restrictions imposed within the United States District Court for the District of Maryland.

W. No Monetary Compensation. The Parties acknowledge that, excluding the payment of attorneys’ fees and costs to Plaintiffs’ counsel in the Lawsuit, nothing contained in this Agreement creates, mandates, or constitutes any obligation of the Director, the County, PGCDOC, and/or their respective agents, affiliates, attorneys, contractors, employees, insurers, managers, members, parents, predecessors, servants, subsidiaries, successors, and vendors to compensate, pay, or otherwise provide any monetary payment of any kind to any detainee formerly housed, currently housed, or housed in the future at the Jail. Moreover, nothing in this Agreement creates any basis for any detainee to seek any financial recovery or monetary benefit of any kind from the Director, the County, PGCDOC, and/or their respective agents, affiliates, attorneys, contractors, employees, insurers, managers, members, parents, predecessors, servants, subsidiaries, successors, and vendors.

X. Tax Implications of Resolution. Plaintiffs and their counsel agree and understand that the Director has not made any representations regarding the tax treatment of any sums paid pursuant to this Agreement. Plaintiffs and their counsel acknowledge and agree that they are responsible for determining the tax consequences of any such payment and for paying taxes, if any,

that may be owed with respect to such payment. In the event that a claim for such taxes, and/or penalties and interest, is asserted by any taxing authority as a result of Plaintiffs' or their counsel's failure to pay any taxes determined to be owed, Plaintiffs and their counsel hereby agree to indemnify and hold the Director harmless for any and all tax liability, interest, and/or penalties as may be due as a result of any failure to pay taxes owed as a result of this Agreement.

Y. Implementation Consistent with Law. The Parties acknowledge that this Agreement is controlled by and will be implemented in accordance with applicable Maryland and federal law. Nothing in this Agreement constitutes or is intended to constitute a waiver of any applicable privilege or immunity of any kind. During the term of this Agreement, the Protective Order (ECF No. 108) shall remain in full force and effect. Any obligation under this Agreement to collect and share personal health information and other private or confidential information shall be disclosed and protected consistent with the "Confidential" and/or "Attorneys' Eyes Only" designations in the Protective Order. Nothing in this Agreement shall be construed to authorize or require the Parties to release any personal health information or other private or confidential information pertaining to the Parties, except as expressly permitted by the Protective Order.

Z. No Prior Assignment. The Parties hereby acknowledge, represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, hypothecated, encumbered, or purported to assign, transfer, hypothecate, or encumber to any person or entity anything released in Section III.P above.

AA. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to its subject matter and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or written, regarding the subject covered in this Agreement. The Parties acknowledge that no representations, inducements, promises, or statements related to this settlement or the subjects covered in this Agreement, oral or written, have been made by any of the Parties or by anyone acting on behalf of the Parties which are not embodied

or incorporated by reference in this Agreement, and further agree that no other agreement, covenant, representation, inducement, promise, or statement relating to this settlement or the subjects covered in this Agreement not set forth in writing in this Agreement have been made by any Party. A commitment, obligation, or right not expressly stated in this Agreement shall not be created by implication. The Parties and their counsel mutually contributed to the preparation of this Agreement and, therefore, neither this Agreement nor any term or provision of this Agreement shall be construed against any Party on the grounds that one of the Parties or its counsel drafted it.

BB. Modification. No term or provision of this Agreement may be modified unless such modification is agreed to in a writing signed by all Parties.

CC. Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person, business entity, or governmental entity not a Party to this Agreement any right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. Without waiving this Section III.CC of the Agreement, the Director agrees that Plaintiffs may substitute up to two (2) additional detainees incarcerated at the Jail at the time of the substitution as additional Plaintiffs as necessary, and re-substitute as needed, to avoid any concerns regarding standing to enforce this Agreement.

DD. Severability. If any section, subsection, or portion of this Agreement is held to be invalid by a court of law after the Effective Date, the remaining portions of this Agreement shall continue to be in full force and effect.

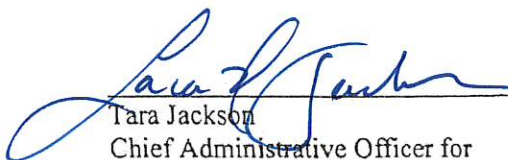
EE. Binding of Successors and Assigns. This Agreement is binding upon the Parties and their successors, assigns, employees, and agents.

FF. Captions and Headings. The captions and headings of this Agreement are for convenience of reference only and in no way define, limit, or describe the scope or intent of this Agreement.

GG. Agreement Execution. This Agreement may be executed in counterparts, each of

which shall be deemed an original but all of which together shall constitute the same instrument.
Signed signature pages may be transmitted via facsimile or electronic mail, and any such signature shall have the same legal effect as an original.

Signed and Agreed:

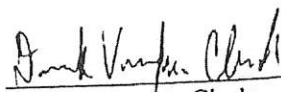

Tara Jackson
Chief Administrative Officer for
Prince George's County, Maryland
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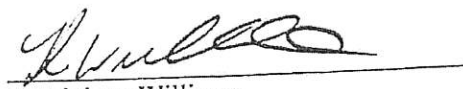
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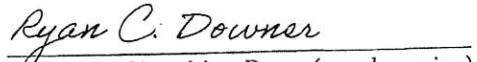
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Attorneys for Director Corene Labbe


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