

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 1284-cv-0250ROBERT CANTELL, et al.,
Plaintiffs,

v.

COMMISSIONER OF CORRECTION, et al.,
Defendants.SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
FILED

MAY 15 2020

MICHAEL JOSEPH DONOVAN
CLERK OF COURT

**JOINT MOTION FOR APPROVAL OF AMENDMENT TO SETTLEMENT
AGREEMENT**

Pursuant to Section X(C) of the Settlement Agreement entered into by the parties in this class action, the parties jointly move for this Court to approve an amendment to the Settlement Agreement. A copy of the parties' signed Amendment to Settlement Agreement is attached hereto as Exhibit A.

After a hearing on June 5, 2019, in accordance with Mass. R. Civ. P. 23(c), this Court (Roach, J.) approved the Settlement Agreement by Order dated June 13, 2019. Pursuant to that Order, the effective date of the Settlement Agreement was July 1, 2019. Section X(C) of the Settlement Agreement governs any amendments to the Settlement Agreement. Section X(C) provides:

By mutual agreement, the parties may change the terms of this Settlement Agreement, provided that such mutual agreement is memorialized in writing, signed by the parties, through counsel, and approved by the Court.

In light of the COVID-19 pandemic, in accordance with Section X(C) of the Settlement Agreement, the parties have mutually agreed to amend the Settlement Agreement and have memorialized this agreement in writing. See Exhibit A. Specifically, the parties have agreed to suspend any monitoring of the Settlement Agreement pertaining to the Fourth Settlement Quarter, i.e., April 1, 2020 through June 30, 2020, as well as any of the reporting requirements pertaining to the Fourth Settlement Quarter that are set forth in Section VIII of the Settlement Agreement.¹ As a result of such suspension of the monitoring and reporting requirements, the parties have further agreed that the plaintiffs may not pursue or allege, under Section IX of the Settlement Agreement, that the Department of Correction (Department) is not or was not in substantial compliance with any Section or Sections of the Settlement Agreement during the Fourth Settlement Quarter, i.e., April 1, 2020 through June 30, 2020. The parties have also agreed that, as a result of the suspension of the monitoring and reporting requirements set forth in the Settlement Agreement pertaining to the Fourth Settlement Quarter, i.e., April 2020 through June 2020, the total term of the Settlement Agreement, set forth in Sections IX(B) and X(B)(3) of the Settlement Agreement, shall be extended by three months, i.e., from July 1, 2021 through September 30, 2021, so that the term of the Settlement Agreement and the jurisdiction of the Court shall extend for two years and three months from the effective date of the Settlement Agreement (July 1, 2019).

The parties agreed to the above amendments because of the COVID-19 pandemic that has affected, among other things, Department inmates in Department custody, Department staff, and vendor staff who are contracted by the Department to provide a myriad of services to inmates. Because of the serious health and safety concerns for both inmates and staff and

¹ In accordance with Section VIII of the Settlement Agreement, the Department's reporting obligations for the Fourth Quarter would not commence until the conclusion of that Quarter, i.e., *after* June 30, 2020.

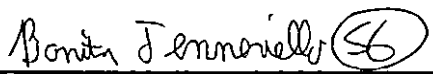
precautions that have been made, or may need to be made in the near future, it may be difficult or impossible for all the terms of the Settlement Agreement to be safely complied with while the COVID-19 threat remains.

Based on the current COVID-19 pandemic projections issued by federal and state officials, the parties believe that suspension of the monitoring and reporting requirements pertaining to the Fourth Settlement Quarter, i.e., April 2020 through June 2020, is appropriate and the parties are hopeful that no further suspensions will be necessary. In the event the threat from the COVID-19 pandemic has not subsided by June 30, 2020, the parties will assess whether any further amendments to the Settlement Agreement would be appropriate at that time.

CONCLUSION

For the aforementioned reasons, the parties jointly request that the Court approve the Amendment to Settlement.


Respectfully submitted on behalf of the
Plaintiffs, by their attorney,



Bonita Tenneriello, BBO # 662132
Prisoners' Legal Services
50 Federal Street, 4th Floor
Boston, MA 02110
(617) 502-6806
btenneriello@plsma.org

Respectfully submitted on behalf of the
Defendants, by their attorney,

NANCY ANKERS WHITE
Special Assistant Attorney General




Sheryl F. Grant, BBO # 647071
Department of Correction - Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110
(617) 727-3300 ext. 1140
Sheryl.Grant@doc.state.ma.us

Dated: May 13, 2020

CERTIFICATE OF SERVICE

I certify that on this 12th day of May 2020, I served a copy of the foregoing Joint Motion on counsel for the Plaintiffs by e-mail and by placing a copy in the depository for mailing, first class mail: Bonita Tenneriello, Esq., Prisoners' Legal Services, 50 Federal Street, 4th Floor, Boston, MA 02110.



Sheryl F. Grant, Esq.