
SUPREME COURT OF THE STATE OF NEW
YORK
COUNTY OF THE BRONX

Matter of JOSEPH AGNEW, ANTHONY GANG,
TYRONE GREENE and KAMER REID,

On behalf of themselves and all others similarly
situated,

Petitioners,

For a judgment under Article 78 of the Civil Practice
Law and Rules

--against--

NEW YORK CITY DEPARTMENT OF
CORRECTION,

Index No. 813431/2021E
(Taylor, J.)

Respondent.

**PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
ORDER TO SHOW CAUSE FOR CONTEMPT AND MOTION FOR FURTHER
EQUITABLE RELIEF**

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Petitioners Joseph Agnew, Anthony Gang, Tyrone Greene, and Kamer Reid, and the class of all persons who are or will be in New York City Department of Correction custody who have been or will be denied access to medical care based on Respondent's failure to discharge its ministerial duties (collectively, "Petitioners"), by their undersigned attorneys, respectfully submit this memorandum of law in support of their Order to Show Cause why a judgment should not be made and entered by this Court to: (a) hold the New York City Department of Correction ("DOC" or "Respondent") in contempt, pursuant to C.P.L.R. § 5104 and Judiciary Law § 753, for violations of the Court's Decision and Order Granting Mandamus Relief, dated December 3, 2021 and entered December 6, 2021 (NY St Cts Elec Filing [NYSCEF] Doc No. 81, order (the "December Order")); (b) award a contempt fine of \$250 per instance that DOC has failed to comply with the Order between February and October 2022, payable to the aggrieved Petitioner class members; and (c) award Petitioners' attorney's fees and costs for this motion. Further, in the event DOC is unable to purge itself of contempt within 30 days, Petitioners move the Court to exercise its equitable powers to issue an order requiring DOC to take specific steps to come into compliance with the December Order. Specifically, Petitioners move the Court to hold an evidentiary hearing to determine the maximum number of people for whom DOC can "receive and safely keep" as required under Correction Law § 500-c(4) and the December Order, and to issue an order forbidding DOC from housing more than that maximum number of people in its facilities.

PRELIMINARY STATEMENT

In the year since this Court ordered Respondent DOC to comply with its ministerial duties to provide people in its custody with adequate access to medical care, 21 people in DOC custody have died. Just a few days ago, 39-year-old Edgardo Mejia died in custody after an apparent

overdose, when DOC's administration of Narcan was too late to revive him.¹ The New York City Board of Correction, an independent oversight board, has issued reports tying several deaths to DOC's deficiencies in providing access to medical care. Almost everyone who died in custody missed numerous medical and mental health care appointments. Two months after the December Order, when 19 of those class members were still alive, Petitioners moved for a contempt finding based on evidence that DOC had failed to comply in December 2021 and January 2022.² On May 17, 2022, this Court held DOC in contempt for violating the December Order during those two months.³ The Court gave DOC thirty days to demonstrate that it had purged itself of contempt.⁴ But DOC did not cure its noncompliance, and many thousands of people continued to miss medical appointments. Accordingly, on August 9, 2022, this Court found that DOC failed to purge itself of its contempt of the December Order,⁵ and DOC remains out of compliance despite having additional months to show that it would provide access to care.

DOC has repeatedly pointed to its high rates of staff absenteeism as the reason it has failed to provide access to medical care for people in its custody. Recent data does not support this contention. In the period following the May Contempt Order, DOC represented that it had instituted new programs to incentivize staff to return to work and better manage its present staff.⁶ According to DOC, as of June 2022, its rate of staff absenteeism was at its lowest since August 2021.⁷ Despite these reported improvements, the number of instances in which people are denied medical care due to non-production by DOC remains high, with thousands of failures to provide

¹ Third Affirmation of Katherine Kelly Fell, dated December 19, 2022 ("Third Fell Affirmation"), Ex A, Jan Ransom & Jonah E. Bromwich, *Tracking the Deaths in New York City's Jail System in 2022*, NY Times, Dec. 12, 2022. Hereinafter, references to "Ex _" refer to exhibits attached to the Third Fell Affirmation.

² See NYSCEF Doc No. 86, proposed order to show cause on contempt.

³ See NYSCEF Doc No. 126, order ("May Contempt Order").

⁴ *Id.* at 6.

⁵ NYSCEF Doc No. 148, order ("August Contempt Order").

⁶ See NYSCEF Doc No. 129, affirmation of counsel for respondent DOC in support of compliance ¶ 19.

⁷ *Id.* ¶ 17.

access to care in a given month, including hundreds of missed appointments due to factors within DOC's control, such as a failure to provide a staff escort. The contrast between DOC's improving staff attendance numbers and its consistently high non-production numbers can only be explained by severe mismanagement—as Petitioners contended in the prior contempt proceedings and Respondent did not refute.⁸ In the face of the ongoing crisis in the jails, DOC continues to deprioritize access to medical care for those in its custody. Throughout this litigation, DOC has chosen to manipulate the data to obscure its noncompliance instead of making meaningful changes that would protect people in custody by actually addressing the systemic issues preventing compliance with DOC's statutory duties and the December Order.

A year after the December Order, people in DOC's custody are still suffering myriad harms—including death—from delay and outright denial of access to injury care, chronic care, and critical medications as a result of DOC's continued noncompliance. Worse, people are suffering this denial of medical care amidst unprecedented disorder and squalor in the jails, which has attracted attention from the news media and the United States Attorney for the Southern District of New York, among others. Against this backdrop of inhumane conditions and limited access to care, it is sadly unsurprising that people in DOC custody have died at rates unheard of in previous years. It is clear that DOC is currently incapable of meeting its obligation to “safely keep” persons in its custody and is furthermore indifferent to this fact. The prospect of paying fines for its noncompliance has not sufficiently incentivized DOC to make the changes needed to both comply with its preexisting legal duties and the orders of this Court to “safely keep” the persons in its custody.

⁸ *See, e.g.*, NYSCEF Doc. No. 116, petitioners' reply memorandum of law in support of their order to show cause for contempt, at 3-4 (writing that “the record demonstrates that DOC's own administrative failures, not the COVID-19 pandemic, caused thousands of people in its custody to miss medical appointments month after month for more than a year”).

Petitioners respectfully request that the Court enter an order of contempt for February 1, 2022 through October 31, 2022, the period immediately after the period at issue in the May Contempt Order. Petitioners respectfully submit that the fines assessed against DOC for its noncompliance should be increased to the statutory maximum of \$250 per instance of undisputed and confirmed denial of access to care, in light of DOC's recalcitrance, as well as award Petitioners' attorney's fees and costs for this motion. Finally, Petitioners respectfully request that, in the event DOC is unable to purge itself of contempt within 30 days, the Court exercise its equitable powers to hold an evidentiary hearing to determine the maximum number of people that DOC can "receive and safely keep" in its custody by ensuring timely access to medical care, and to issue an order forbidding DOC from housing more than that maximum number of people in its facilities.

FACTS

1. Despite Being Held in Civil Contempt for Violations of the December Order in December 2021 and January 2022, DOC Continues to Flout This Court's Order

Despite this Court's December Order and widespread reports and condemnation of the ever-deteriorating conditions in the City jails, DOC has continued to flout its legal and ethical obligations to provide adequate access to medical care for people in its custody.⁹

DOC's failure to comply with these obligations was documented in the proceedings for Petitioners' first contempt motion.¹⁰ In those proceedings, Petitioners detailed DOC's history of delaying or failing to provide access to medical care, including by failing to produce large numbers of people in its custody to medical appointments.¹¹ Petitioners further highlighted the extent to

⁹ See Ex B, Jonah E. Bromwich & Jan Ransom, *N.Y.C. Jail Officials Avert a Federal Takeover of Rikers Island*, NY Times, May 24, 2022.

¹⁰ See NYSCEF Doc No. 105, memorandum at 5-8.

¹¹ See NYSCEF Doc No. 1, petition at 1-4.

which DOC failed to ensure that people could move safely within the jails so that they could receive timely health services.¹² Petitioners argued that DOC's failings constituted noncompliance with the December Order and requested that the Court hold DOC in contempt.¹³ DOC did not dispute its noncompliance and instead asserted through its papers and two affidavits from Bureau Chief Ada Pressley that it was impossible for it to comply with the December Order, principally due to staff absenteeism it attributed to the COVID-19 pandemic.¹⁴

Following an evidentiary hearing, the Court rejected DOC's impossibility defense on May 17, 2022, finding that DOC "failed to meet its heavy burden to demonstrate that it [wa]s impossible to comply with the [December Order]" and that the record was "devoid of any evidence of [DOC's] factual impossibility to comply with the [Order]."¹⁵ Moreover, the Court held that any "good faith attempts to comply with a court's order [are] not a recognizable defense to a motion for contempt."¹⁶ The December Order "expressed an unequivocal mandate for [DOC] to comply with its duties to provide inmates with access to sick call and not prohibit or delay them from health services," and, as explicitly stated by the Court, "[DOC's] failure to provide or delay inmates access to health services constitutes disobedience of the [Order]."¹⁷

Accordingly, the Court held DOC in civil contempt of the December Order and ordered compensatory fines "of \$100 for each missed escort to the infirmary for the period December 11, 2021 through January 2022," as well as an award of attorneys' fees incurred in connection with

¹² *Id.* at 8-14.

¹³ *See* NYSCEF Doc No. 105 at 9-12 (discussing why DOC should have been held in contempt for its noncompliance in the first contempt proceeding).

¹⁴ *See* NYSCEF Doc No. 91, affirmation of petitioners' counsel in supp of order to show cause, exhibit 4, aff of Ada Pressley; *see also* NYSCEF Doc No. 111, respondent's mem; NYSCEF Doc No. 109, Pressley aff in opp to motion for an order of contempt.

¹⁵ NYSCEF Doc No. 126 at 5.

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 5.

the motion.¹⁸ The Court directed that DOC could purge itself of the contempt finding if it submitted proof of substantial compliance with the December Order within 30 days of May 17, 2022, the date of entry of the May Contempt Order.¹⁹

DOC failed to purge itself of contempt. The evidence supplied in support of its request to purge the May Contempt Order showed that DOC failed to produce people to medical appointments 186 times from May 17, 2022 through June 12, 2022 because no staff escort was available,²⁰ and a total of 1,910 times due to “Maximum Safe Capacity” limits from the beginning of May 2022 through June 15, 2022.²¹ Before the May Contempt Order, DOC had not reported “Maximum Safe Capacity” as a reason for not producing people to medical care. According to DOC, “Maximum Safe Capacity” refers to instances in which people were not produced to their scheduled clinic appointments because there was insufficient space in clinic waiting areas.²² DOC argued that non-productions due to “Maximum Safe Capacity” should not be considered noncompliance with the December Order because that order focused on a lack of escorts to appointments.²³ In response, Petitioners argued that the December Order is clear in its directive to DOC to provide *access* to medical care—however that access is achieved—and does not distinguish between methods of providing that access.²⁴ Petitioners asserted that because the allotment and use of facility space is solely within DOC’s control, “Maximum Safe Capacity” is “simply another way in which pervasive mismanagement and dysfunction is contributing to the

¹⁸ *Id.* at 6-7.

¹⁹ *Id.* at 6.

²⁰ NYSCEF Doc No. 129 ¶ 5.

²¹ *See* Doc No. 142, aff of petitioners’ counsel in sur-reply, exhibit 1 (showing 1,441 non-productions due to “Maximum Safe Capacity” in May 2022 and 469 non-productions due to “Maximum Safe Capacity” from June 1, 2022 through June 15, 2022, respectively).

²² NYSCEF Doc No. 140, aff of respondent in opp to motion for contempt ¶ 20.

²³ *Id.* ¶ 22.

²⁴ *See* NYSCEF Doc No. 141, aff of petitioners in sur-reply to the Department of Correction compliance aff ¶ 9.

medical care access crisis in DOC's facilities."²⁵ Petitioners argued that DOC could not purge itself of contempt by providing additional escorts if that increase in escorts did not result in meaningful improvement in access to care because DOC has inadequate space and security in the clinic waiting areas.²⁶ Petitioners also explained that, while the Court need not look any further than DOC's monthly non-production reports—which track and quantify *undisputed* instances of non-production in categories that are attributable to DOC mismanagement, such as lack of escort and Maximum Safe Capacity—those instances constitute merely a portion of DOC's total noncompliance with the December Order. The record is replete with evidence of other ways in which DOC is failing to comply with the December Order but which are not included in the published non-production numbers on which Petitioners relied, including by failing to provide access to emergency medical care.²⁷

In its August Contempt Order, this Court agreed with Petitioners, holding that DOC still had not satisfied “its heavy burden . . . to demonstrate that it substantially complied with the [December Order].”²⁸ The Court rejected DOC's stunted reading of the December Order as directing DOC only to provide additional escorts, explaining that DOC's duties were “to allow petitioners ‘access to sick call on weekdays . . . within 24 hours of a request, or at the next regularly scheduled sick call, whichever is first . . . and by not prohibiting or delaying incarcerated persons’

²⁵ *Id.* ¶ 10.

²⁶ *Id.* ¶ 12 (“To achieve substantial compliance with this Court's December Order, DOC *must not be the cause of the denial of access to medical care*. . . . Whether that means providing additional escorts to bring people to the clinic, making additional space or security available in the clinic areas so that people are safe while waiting for their scheduled medical appointments, or taking any other action, it is incumbent on DOC to provide this access.”) (emphasis in original)).

²⁷ *See id.* ¶¶ 16-17 (reiterating DOC's obligation “to provide access to medical care, which includes, but is not limited to, access to medical appointments,” and discussing Board of Correction investigative report findings indicating “that, in each of the three deaths discussed . . . , there were issues relating to failures of DOC to adequately staff its housing units resulting in delayed access to medical care, a history of not transporting the individual to medical appointments or medication, or both . . .”).

²⁸ NYSCEF Doc No. 147 at 4-5.

access to care, appropriate treatment, or medical or dental services.”²⁹Accordingly, the Court found that DOC had “failed to purge itself of the [May Contempt Order],” and ordered DOC to pay “petitioners \$100.00 for each missed escort to the infirmary, from December 11, 2021 through January 2022,” and reasonable attorneys’ fees in connection with the contempt proceeding.³⁰

On September 7, 2022, DOC filed its notice of appeal of the August Contempt Order.³¹ Accordingly, enforcement of that order is stayed pending disposition of the appeal. Because DOC did not appeal the December Order, however, this motion to hold DOC in contempt of that order for a period subsequent to that covered in the first contempt motion is procedurally proper. *See, e.g., Bell v White*, 55 AD3d 1211, 1214 [3d Dept 2008] (stating that an underlying order, the violation of which resulted in contempt findings, was “not properly before” the court “since plaintiff never appealed from it”); *State ex rel. Sassower v Cunningham*, 112 AD2d 119, 120 [1st Dept 1985] (“Having failed to appeal, petitioner may not disregard the order with impunity nor may he use the contempt citation to revive any right to appeal or otherwise challenge the underlying order, which right terminated as a result of his failure to appeal therefrom.”); *see also Congregation Yetev Lev D’Satmar, Inc. v Nachman Brach Inc.*, 2009 NY Slip Op. 50070(U) [Sup Ct NY County 2009] [table; text at 2009 WL 104597, *1-2] (ordering an attorney to show cause why he should not be held in criminal contempt for failure to pay a sanction where the underlying order had not been appealed or stayed, in response to letter informing court of nonpayment). DOC also did not appeal the May Contempt Order; accordingly, the Court’s order holding DOC in contempt and other findings in that order are final and may not be collaterally attacked through

²⁹ *Id.* (quoting NYSCEF Doc No. 81 at 2).

³⁰ *Id.* at 7.

³¹ *See* NYSCEF Doc No. 149, notice of appeal.

opposition to this motion or the appeal of the August Contempt Order. *See Bell*, 55 AD3d at 1213-14.

2. DOC Continues to Fail to Comply With the December Order and Should Be Held in Contempt For the Period between February and October 2022

The available evidence shows that DOC continued to disobey the December Order in the period from February through October 2022 (the latest month for which DOC has provided non-production numbers). First, as discussed in more detail below, DOC's own reporting shows that it caused hundreds to thousands of people in custody to miss clinic appointments each month from February through October 2022 because it either failed to provide an escort or because it failed to provide adequate space for people to safely wait for their scheduled medical appointments. The number of non-productions to medical care in these two categories ("Maximum Safe Capacity" and "No Escort")—which are tracked and reported in DOC's monthly non-production reports—are undisputed non-productions where DOC is at fault. If the Court agrees that (i) failing to provide escorts to scheduled medical appointments and (ii) failing to provide sufficient safe space in which to wait, causing people to miss their appointments, constitute disobedience of the December Order, then the Court need not look further than the non-production reports to find for Petitioners and enter an order of contempt for the period February through October 2022.

In addition to the "No Escort" and "Maximum Safe Capacity" numbers, there is additional evidence of noncompliance with the December Order in the period from February through October 2022. For example, and as discussed in more detail below, DOC's monthly non-production reports show that DOC is especially ill-equipped to handle an emergency or last-minute priority need without having to cancel hundreds to thousands of previously scheduled appointments each month. That is unacceptable and constitutes further mismanagement of the jails that violates the December Order. Further, Petitioners' counsel regularly receives complaints from people in custody who

state that they are not being taken to scheduled medical appointments and that DOC incorrectly categorized their missed appointments as “Production Refusals.” These missed appointments, which DOC improperly reports as refusals, constitute additional noncompliance by DOC.

While these additional instances of noncompliance with the December Order are difficult for Petitioners to quantify, there is nonetheless sufficient evidence for the Court to infer that noncompliance between February and October 2022 is greater than that reflected in the “No Escort” and “Maximum Safe Capacity” categories. Yet the Court need not look further than the non-productions in those two categories for February through October 2022 to find DOC in contempt of the December Order. The data show undisputed instances of denied access to care where DOC is directly at fault, and, if the Court agrees that a failure to produce people to medical care because of a lack of escorts or because of an alleged lack of appropriate waiting space is noncompliance with the December Order, the Court need not review any additional evidence to find contempt.

a. DOC Continues to Fail to Produce People in Custody to Medical Care Due to Lack of Escorts and “Maximum Safe Capacity”

Between February 1, 2022, and October 31, 2022, people in custody missed **5,231** scheduled medical appointments because DOC failed to provide an escort. Figure 1, *infra*, displays the data for each month. The Court’s previous rulings support the idea that any non-production for this reason is attributable to DOC and constitutes a violation of the December Order.³²

The second category of non-productions for which DOC is directly responsible is a category DOC recently created, labeled “Maximum Safe Capacity.” The allocation of space and staff in the jails is entirely within the control and discretion of DOC, and, as Petitioners noted in

³² See generally NYSCEF Doc No 81 (awarding petitioners mandamus relief directing DOC to perform its non-discretionary duties).

their sur-reply briefing, DOC controls security in clinic waiting areas.³³ Failure to provide adequate space and security in the clinic areas is another way in which DOC is interfering with the access to medical care required by law and the December Order.³⁴

The number of reported Maximum Safe Capacity non-productions has fluctuated significantly, despite the total number of medical appointments remaining relatively constant recently. For example, DOC reported 1,401 non-productions in this category in April 2022 and 738 non-productions in this category in June 2022.³⁵ However, the total number of scheduled appointments was actually lower in April than June notwithstanding that physical space available has remained the same.³⁶

Before non-productions skyrocketed in August 2020, DOC operated the same facilities with the same amount of available clinic space. Despite being subject to the same physical limitations as they claim currently impede their ability to provide access to medical care, in June 2020, DOC reported only 2,083 total non-productions and only 175 non-productions in the “other” category, which likely encompasses Maximum Safe Capacity non-productions.³⁷ In May 2022, DOC reported 10,976 total non-productions and 1,441 non-productions in the Maximum Safe Capacity category alone.³⁸ DOC’s assertion that now they have insufficient space is simply not credible. Moreover, Petitioners assert that there is in fact sufficient clinic space to accommodate

³³ See NYSCEF Doc No. 141 ¶ 10 (“The new data shows that, in addition to failing to provide escorts to bring people to scheduled medical appointments, DOC is *also* denying access to care through its failure to provide adequate space and security in the waiting areas of the clinics, spaces under the control and management of DOC.” (emphasis in original)).

³⁴ *Id.* ¶ 14 (“DOC is required to have the capacity to deliver both scheduled appointments and emergency medical and mental health care as part of its duty to provide care for its patients. Non-productions in these new categories are clearly attributable to DOC’s administrative failures.”).

³⁵ See NYSCEF Doc No. 142; Ex C, June 2022 Non-Production Report disaggregating “Other” category.

³⁶ See Ex D, *CHS Access to Health Services Report, April-June 2022*, https://www.nyc.gov/assets/boc/downloads/pdf/Reports/Correctional-Health-Authority-Reports/CHS-Access-Report_CY2022_Q2_25Jul22.pdf at 4 (reporting 52,993 appointments scheduled in April 2022); *id.* at 30 (reporting 53,956 appointments scheduled in June 2022).

³⁷ See Ex C.

³⁸ See Ex E, October 2022 Non-production report disaggregating “Other” category.

all appointments and that these non-productions instead occur due to other aspects of DOC's administrative mismanagement.

Between February 1, 2022 and October 31, 2022, DOC attributed **7,123** missed scheduled medical appointments to its failure to provide adequate space and security for persons in custody to safely wait for scheduled medical care. Petitioners respectfully submit that any non-production for this reason constitutes a violation of the December Order.

The following table is a compilation of DOC's reported data on non-productions attributable to "No-Escort" and "Maximum Safe Capacity" for the period from February through October 2022 (as well as December 2021 and January 2022 and the total non-productions for each month across all categories, highlighted in gray, for context):

Month	No Escort	Maximum Safe Capacity	Total Non-Productions Attributed to No Escort and Maximum Safe Capacity (February Through October)	Total Monthly Non-Productions (All Categories)
December 2021	1,061	0	1,061	7,066
January 2022	868	0	868	6,812
February 2022	819	475	1,294	8,892
March 2022	1,235	2,115	3,350	12,938
April 2022	1,465	1,401	2,866	11,788
May 2022	759	1,441	2,200	10,976
June 2022	4	738	742	8,997
July 2022	325	184	509	8,914
August 2022	279	282	561	9,269
September 2022	181	275	456	9,415
October 2022	164	212	376	9,674
Totals (February Through October)	5,231	7,123	12,354	90,863

Figure 1. The Court need not look any further than the **12,354** instances of non-production attributed to lack of escorts and "Maximum Safe Capacity" between February and October 2022 to find contempt of the December Order.

b. DOC's Failure to Provide Access to Medical Care in Situations Beyond Lack of Escorts and "Maximum Safe Capacity" Is Further Evidence of DOC's Continuing Noncompliance

In addition to the above-quantified instances of non-production, DOC began reporting two additional new categories of missed appointments that further support the conclusion that DOC is fundamentally incapable of providing access to medical care to the people in its custody: "Priority Medical Emergency" and "Priority Mental Health Visit."³⁹ According to DOC, these new classifications "encompass medical and mental health emergencies that preempt planned clinic production" and "reflect instances where a scheduled appointment is preempted by others' need for emergency treatment."⁴⁰ The "Mental Health Priority" metric, specifically, "also encompasses instances where individuals require a discharge plan appointment—which typically occurs when an individual requiring mental health related discharge planning and services . . . suddenly makes bail."⁴¹ According to DOC, it "prioritizes" such visits "to ensure that a discharge plan can be prepared in conjunction with their timely release."⁴² In June, July, August, September, and October 2022, DOC reported a total of 2,212 missed appointments under these categories.⁴³ There is also wide variation in the number of cancellations based on priority medical emergencies each month; for instance, there were 101 such cancellations in June 2022, 636 in July 2022, 843 in August 2022, 281 in September 2022, and 285 in October 2022.⁴⁴ It is unclear whether those numbers are attributable to significant fluctuations in the number of medical emergencies each month, to the

³⁹ See, e.g., Ex C; Ex F, July 2022 Non-Production Report disaggregating "Other" category; Ex G, August 2022 Non-Production Report disaggregating "Other" category; Ex H, September 2022 Non-Production Report disaggregating "Other" category; Ex I; NYSCEF Doc No. 140 ¶¶ 18, 23-24.

⁴⁰ NYSCEF Doc No. 140 ¶ 23.

⁴¹ *Id.* ¶ 24.

⁴² *Id.*

⁴³ See Ex C (showing 101 missed appointments due to "Priority Medical Emergency" in June 2022); see also Ex F (showing 636 missed appointments due to "Priority Medical Emergency" and 41 missed appointments due to "Priority Mental Health Visit" in July 2022).

⁴⁴ See NYSCEF Doc No. 142 (February through October); Ex C (June); Ex F (July); Ex G (August); Ex H (September); Ex E (October).

nature of those emergencies, or to inconsistent management decisions made in response to similar numbers of emergencies. DOC's data does not specify whether DOC or Correctional Health Services ("CHS") is deciding who must miss medical appointments as a result of such emergencies. It is reasonable to infer that the decision to deprioritize or not to produce certain persons to their appointments in these instances is a DOC decision, because they appear in the data as missed medical appointments rather than as appointments rescheduled by CHS.

Petitioners understand the need for emergency services to be prioritized, but DOC's obligation to provide medical care to *all* people in its custody requires it to be able to provide access to emergency care *and* access to scheduled medical appointments. Failure to provide care to several hundred people per month under such circumstances raises serious questions about DOC's ability to comply with the December Order so long as the jail census remains the same or larger.

Similarly, and as previously noted by Petitioners,⁴⁵ DOC has obligations under the law and the December Order that go beyond providing access to sick call appointments in the facility clinics, obligations it scarcely acknowledges and does not meet. As stated in the December Order, DOC must refrain from "prohibiting or delaying incarcerated persons' access to care, appropriate treatment, or medical or dental services."⁴⁶ DOC must also receive and "safely keep" each person in its custody.⁴⁷ DOC's public reporting obligation may be limited to instances of non-production to jail clinics for scheduled medical appointments, but it is required by law to provide timely access to other types of medical care, including emergency medical care. The record is replete with evidence that DOC is prohibiting or delaying access to these modes of medical care as well. For

⁴⁵ See, e.g., NYSCEF Doc No. 130, letter at 2; NYSCEF Doc. No. 141 at 4 (reciting language of the order, which extended beyond escort services to the clinic).

⁴⁶ NYSCEF Doc No. 81 at 7.

⁴⁷ *Id.*

example, media reports, which the Board of Correction has confirmed, documented several occasions in which people in custody have had to carry their peers to medical treatment during emergencies because there was no staff available to provide help or to escort the person to medical staff.⁴⁸ The Board of Correction's February and March 2022 Deaths in Custody Report states that people in custody, not correctional officials, carried George Pagan "out of the unit and down the steps to the main floor to await medical staff" on March 16, 2022, the day he died, while the "B" officer assigned to the unit was "within the 'A' station control room instead of touring the housing area floor."⁴⁹ The same report also states that people in custody, not staff, attempted to render emergency first aid and ultimately carried Herman Diaz to the clinic on March 18, 2022, the day he died, again in the absence of a "B" officer in the unit.⁵⁰ The Board of Correction's November 2022 Report on Deaths in New York City Department of Correction Custody ("November Deaths in Custody Report") recounts a similar scenario in the death of Dashawn Carter, who was first given emergency aid by people in custody before he died.⁵¹ Other people in custody reported that Mary Yehudah had been moaning in her cell from 9 p.m. on May 16, 2022 until the morning of May 17, 2022, but staff either did not notice or did not respond until a person in custody alerted an officer that she needed help.⁵² Ms. Yehudah, who was diabetic, died of "'very bad diabetic ketoacidosis' because 'her blood levels were so bad,'" according to Elmhurst Hospital Records.⁵³

⁴⁸ See, e.g., NYSCEF Doc No. 144, aff of petitioners' counsel exhibit 3 (copy of February & March 2022 Deaths in DOC Custody Report and Recommendations, dated May 9, 2022) at 3-5 (describing how George Pagan and Tarz Youngblood were carried to the clinic by other people in custody); Ex I, Jonah E. Bromwich and Jan Ransom, *Rikers Officers Lagged in Helping 3 Detainees Who Died, Report Finds* (May 9, 2022) (writing that "[o]fficers became aware that Mr. Youngblood was unconscious only when other detainees carried him out of another person's cell and down the stairs," and that "no officer was in his housing area in the hours before other detainees found it necessary to physically carry [Mr. Pagan] out of the unit so that he could receive medical care").

⁴⁹ See NYSCEF Doc No. 144, aff of petitioners' counsel exhibit 3 at 4.

⁵⁰ *Id.* at 5; see also Ex J, image of people in custody carrying Mr. Diaz to the clinic); K, additional image of people in custody carrying Mr. Diaz to the clinic.

⁵¹ See Ex L, *Board of Correction Second Report on 2022 Deaths in New York City Department of Correction Custody* [Nov. 16, 2022].

⁵² *Id.* at 6.

⁵³ *Id.*

DOC also reports a significant number of non-productions due to other events in the jails, such as lockdowns, alarms, and “tactical search operations” (“TSO’s”).⁵⁴ For instance, from June 1, 2022 through October 31, 2022, DOC reported a combined total of 2,370 non-productions classified as “Alarm,” 157 non-productions classified as “Lockdown,” and 567 non-productions classified as “TSO.”⁵⁵ Petitioners understand that security operations are sometimes required to maintain safety. But DOC’s actions merely shift the safety risks to different people in custody—those in need of medical care. Both the law and the December Order require DOC to maintain safety without depriving people in its custody of medical care.

While DOC is not required to report these instances of non-production as distinct categories in its monthly reporting, these non-productions are nonetheless violations of the December Order and should be considered as such when evaluating DOC’s compliance. When considered with the undisputed 12,354 instances of denial of access to medical care in February through October 2022, they provide further support to Petitioners’ position that DOC has failed to comply with the December Order.

c. DOC Undercounts Non-Productions Within Its Control

There is evidence that additional non-productions occur each month that are attributable to DOC action or inaction but are not reflected in DOC’s reporting. CHS data calls into question the accuracy of DOC’s reporting on non-productions. According to CHS Access to Health Services Reports, DOC consistently undercounts non-productions to clinical appointments by several thousand missed appointments. For example, in June 2022, when DOC reported 8,997 total non-productions across all categories, CHS reported a staggering 16,083 total non-productions.⁵⁶ The

⁵⁴ See, e.g., NYSCEF Doc No. 142.

⁵⁵ See Ex C (June); Ex F (July); Ex G (August); Ex H (September); Ex E (October).

⁵⁶ Compare Ex C with Ex D at 31.

Board of Correction also noted “material discrepancies” between CHS and DOC’s reporting on missed medical appointments in the November Deaths in Custody Report.⁵⁷ Even if the discrepancies between DOC data and CHS data were attributable to the fact that DOC does not provide CHS with the reasons for non-productions,⁵⁸ that excuse does not apply in this context, because CHS has the information to accurately document whether someone in custody was brought to their appointment.

Additionally, a total of 55,316 missed appointments were listed by DOC as “Production Refusal” from February through October 2022.⁵⁹ However, as noted in Petitioners’ petition and other briefing in this matter,⁶⁰ counsel for Petitioners continually receive reports from people in custody that DOC misclassifies non-productions caused by DOC’s administrative failures as refusals. For example, class member Theodore Gallo reported that he was scheduled for a thoracic surgical appointment at Bellevue Hospital on September 13, 2022, to have a lump under his ribs evaluated, but that he was pressured to sign a refusal form after being told he could not go to the appointment because “there was a problem with the bus.”⁶¹ He declined to sign the refusal form.⁶²

⁵⁷ Ex L at 23-24.

⁵⁸ See NYSCEF Doc No. 133, letter, exhibit 3 at 39, line 20–40, line 3 (indicating that DOC does not take statements when people refuse appointments, and that CHS does not know if people are actually refusing care if DOC says so; instead, “[t]hey want to see that person in person to get the refusal”).

⁵⁹ See NYSCEF Doc No. 142 (February through May); Ex C (June); Ex F (July); Ex G (August); Ex H (September); Ex E (October).

⁶⁰ See, e.g., NYSCEF Doc No. 1 ¶ 30 (indicating DOC has acknowledged improperly classifying non-productions as refusals); NYSCEF Doc No. 4, Kelsey De Avila aff in supp of petition ¶ 26 (writing that “DOC staff sometimes fills out paperwork stating that a person ‘refused’ to attend a scheduled or requested appointment in medical when that person did not actually refuse” and indicating that, when spoken to about their non-production, persons in custody have “confirm[ed] that they requested to go to sick-call, yet no officer ever appeared to escort them and therefore they could not actually access their medical care”); NYSCEF Doc No. 89, Fell aff, exhibit 2 at 2 (indicating that Mr. Agnew denied refusing a November 19, 2021 appointment, but that a DOC production stated that he had refused to be produced); NYSCEF Doc No. 103, suppl aff of Kelsey De Avila ¶ 26 (“In the last month, I would estimate that my team has spoken with more than ten people who DOC claims refused to go to medical but later confirmed that they were never offered that opportunity”); NYSCEF Doc No. 105 at 9 (“But counsel for Petitioners frequently hears from people in custody, and did so even before bringing this action, that many documented ‘refusals’ are false.” (footnote omitted)).

⁶¹ Ex M, Declaration of Thomas Gallo, dated Sept. 21, 2022); Ex N, copy of refusal form Mr. Gallo refused to sign on September 13, 2022.

⁶² *Id.*

The following day, in the clinic in the Anna M. Kross Center (AMKC), Mr. Gallo was told he would not have his thoracic surgical appointment rescheduled unless he signed a form stating he had refused the surgical appointment.⁶³ Mr. Gallo refused to sign the refusal form on both occasions, on the grounds that he had not refused the Bellevue appointment.⁶⁴ This is just one of many similar reports that class counsel have received.

Investigations by the Board of Correction into the deaths in custody that have occurred in 2021 and 2022 also reflect discrepancies in the data reported by DOC, which create the impression that refusals are more prevalent than they are. For example, Emanuel Sullivan, who died on May 28, 2022, missed 16 medical appointments from February 18, 2022 through May 20, 2022 according to CHS records.⁶⁵ CHS records also reflect that DOC failed to produce Mr. Sullivan for 12 of those missed visits.⁶⁶ In contrast, DOC records have Mr. Sullivan missing 21 appointments, 16 of which they categorize as refusals and 2 of which they claim are a result of Mr. Sullivan leaving the waiting area before he had been seen.⁶⁷ In sum, it is reasonable to infer that the “Production Refusal” numbers in DOC’s data are inflated and include many non-productions caused by DOC action or inaction.⁶⁸

DOC’s inflated refusal numbers and apparent undercounting of total non-productions should be considered in the context of confirmed instances in which DOC staff members deliberately falsified DOC records to obscure DOC’s noncompliance with court orders, the Board

⁶³ *Id.*

⁶⁴ *Id.* Petitioners further note that Mr. Gallo still has not received a rescheduled consult.

⁶⁵ *See* Ex L at 7.

⁶⁶ *Id.*

⁶⁷ *Id.* at 7-8; *see also id.* at 9 (CHS records reflect that Mr. Bradley missed 86 medical visits from October 2021 through June 13, 2022, “the vast majority due to DOC non-production” whereas DOC records, which cover a shorter period from May 14- June 15, 2022, state that Mr. Bradley missed 36 of 68 scheduled appointments, 29 of which were refusals and none of which were due to lack of escorts.).

⁶⁸ *See, e.g.*, NYSCEF Doc No. 4 ¶ 26; NYSCEF Doc No. 89 at 2; NYSCEF Doc No. 103 at 6; NYSCEF Doc No. 105 at 9.

of Correction's minimum standards, or DOC's own policies. For example, the Board of Correction discovered that, in June 2022, DOC staff members tampered with internal records to cover up instances where newly incarcerated people were held for over 24 hours in intake cells in violation of a court order issued in the *Nuñez* case.⁶⁹ As a result, the *Nuñez* Monitor concluded that there is "no reliable data" on intake overstay at present, and that the extent of 24-hour violations "is simply unknown."⁷⁰ Additionally, the November Deaths in Custody Report noted many instances in which DOC staff made false logbook entries.⁷¹ For example, on the day he died, Anibal Carrasquillo reportedly complained of chest pain and asked a correction officer to allow him to go to the clinic, but he was ignored.⁷² DOC staff did not conduct rounds every 30 minutes as required and video surveillance showed that they discovered Mr. Carrasquillo unconscious nine minutes later than the time at which they erroneously claimed in the logbook that they had activated a medical emergency.⁷³

While Petitioners do not have the access to information that would allow them to quantify the numbers of non-productions erroneously categorized in ways that minimize the extent of DOC's responsibility for delayed and denied access to care, the CHS data gives reason to suspect that the number of people denied access to medical care each month due to DOC's failures is far greater than DOC is reporting.⁷⁴

⁶⁹ See Ex O, Memo from Board Staff to Amanda Masters, July 5, 2022 at 1 (over a few days, Board staff documented 16 instances " where Department staff retroactively changed a person's 'In-Custody Start Time,' in what appears to be an effort to obscure or 'cure' 24-hour housing violations").

⁷⁰ Ex P, Second Status Report on DOC's Action Plan by the *Nunez* Independent Monitor, October 28, 2022, at 87.

⁷¹ See Ex L at 23-24.

⁷² *Id.* at 13.

⁷³ *Id.*

⁷⁴ DOC is in the best position to evaluate whether non-productions are properly classified, and should provide evidence to demonstrate the accuracy of their data compared to the CHS data.

d. DOC's Noncompliance is Compounded by DOC's General Mismanagement, Which Creates Inhumane Conditions in its Jails

Although the December Order focused on DOC's failure to provide adequate access to medical care, DOC's noncompliance must be viewed in the wider context of its wholesale failure to properly maintain safe and livable conditions in the jails. DOC's systematic mismanagement of the jails fosters unsanitary and dangerous conditions that contribute to DOC's ongoing failure to provide access to medical care for people in its custody, placing everyone in its custody at ongoing risk for serious medical complications, and there is no indication that those conditions have improved since DOC was first ordered to comply with its preexisting legal obligations in December 2021.

DOC's longstanding mismanagement of its facilities has been widely documented. In March 2022, the *Nuñez* Monitor filed a special report highlighting DOC's "deeply ingrained patterns of mismanagement and dysfunction" in its jails.⁷⁵ DOC actually enjoys more resources than most other correctional systems, including a "bloated" workforce and an "extraordinary" budget.⁷⁶ Yet deep-seated deficiencies led the *Nuñez* Monitor to conclude that DOC's staff "is so poorly administered that even the most basic aspects of workforce management have been neglected and/or circumvented for decades," which has "directly caused a sea of inadequacies."⁷⁷

The Board of Correction recently gave a presentation to prosecutors in the Manhattan District Attorney's Office that displays the atrocious conditions in the jails in graphic detail.⁷⁸ The presentation, which contains photographic and video evidence, depicts: people sleeping on feces-

⁷⁵ See Ex Q, ECF No. 438, Status Report of *Nuñez* Independent Monitor at 14, *Nuñez v City of New York*, 11-cv-5845 (LTS) ("*Nuñez*"), March 16, 2022 (ECF pagination).

⁷⁶ *Id.* at 15.

⁷⁷ *Id.* at 38.

⁷⁸ See Ex R, New York City Board of Correction: State of New York City Jails [August 4, 2022] (shared with petitioners as separate files but combined into one exhibit for the Court's convenience); Ex S, media file associated with presentation (depicting filthy conditions within Rikers); Ex T, media file associated with presentation (depicting people in custody attempting to provide medical assistance to someone in medical crisis).

covered floors in intake pens; burnt, trash-strewn facilities; rotten food; and several instances of people in custody carrying their peers to medical assistance, or providing first aid themselves.⁷⁹ In response to an email about the presentation, Commissioner Louis Molina admitted that DOC's "infrastructure and staffing challenges, which are the result of years of mismanagement and neglect, are no secret."⁸⁰

e. DOC's Noncompliance and Mismanagement Has Contributed to Numerous Deaths in Custody

The Board of Correction has concluded, as it must, that DOC's mismanagement has contributed to many of the deaths in custody. The Board's February and March Deaths in Custody Report states that DOC's failure to maintain "B" officers on units, the absence of "an acceptably functioning system for providing emergency care to persons in life-threatening situations," failure to place people in special medical housing when appropriate, and failure to produce people to medical appointments and to provide them with medication contributed to—that is, were a causal factor in—the deaths of Mr. Diaz, Mr. Pagan, and Tarz Youngblood, among other failings.⁸¹

The Board of Correction's November Deaths in Custody Report discussing nine deaths in DOC custody from May 2022 to mid-August 2022 highlights significant failures, noting touring and observation practices that do not comply with DOC policy in seven instances, multiple deficient or inaccurate logbook entries in three of the deaths, and the fact that a person in custody was the first to raise the alarm of another person being hurt or unresponsive in five instances.⁸² Notably, CHS recorded that each of the nine persons mentioned in that report⁸³ "missed at least

⁷⁹ See *id.*

⁸⁰ Ex U, Matt Katz, *Never-before-seen images show Rikers inmates locked in caged showers, left in soiled pants, more poor conditions*, Gothamist, Sept. 28, 2022.

⁸¹ NYSCEF Doc No. 144 at 6-8 (discussing key findings and stating which failures contributed to each person's death).

⁸² See Ex L at 21.

⁸³ The Board of Correction's November Deaths in Custody Report focused on nine deaths that occurred from May 2022 through mid-August 2022. *Id.* at 2 ("The Board is investigating the remaining six deaths" that occurred from mid-August through November 2022 "and will publish a report with [its] findings.").

one medical appointment because DOC did not produce, or escort them to the clinic.”⁸⁴ For example:

- Mr. Carter, who died by suicide two days after he was admitted on May 5, 2022, missed 92 appointments during two prior incarcerations, including “76 instances due to the Department’s failure to escort him to the clinic.”⁸⁵
- Antonio Bradley, who died on June 18, 2022, “missed 86 medical visits from October 17, 2021 through June 13, 2022, the vast majority due to DOC non-production.”⁸⁶
- Anibal Carrasquillo missed 207 medical visits during his incarceration from September 29, 2019 until his death on June 20, 2022; CHS medical records show that “DOC did not produce Mr. Carrasquillo for 193 of these visits.”⁸⁷

The report also describes a causal link between these missed appointments and some of the deaths. For example, on July 2, 2022, CHS noted that DOC had failed to produce Elijah Muhammad for six methadone appointments in a row.⁸⁸ On July 8, Mr. Muhammad reported ongoing withdrawal symptoms and again asked to receive methadone.⁸⁹ Two days later, he died by overdose.⁹⁰ The Court cannot ignore the causal link between the inaccessibility of medical care in the city jails and the unprecedented number of lives lost in those jails over the past year.

The November Deaths in Custody Report further describes correction officers failing to provide immediate first aid to unresponsive people in three instances,⁹¹ failing to flag concerning behavior in the deaths of Mary Yehudah and Elijah Muhammad,⁹² and ignoring open substance

⁸⁴ *Id.* at 23.

⁸⁵ *Id.* at 4.

⁸⁶ *Id.* at 9.

⁸⁷ *Id.* at 12.

⁸⁸ *Id.* at 16.

⁸⁹ *Id.*

⁹⁰ *Id.* at 12, 16–17, 25.

⁹¹ *Id.* at 2.

⁹² *Id.* at 22.

use in the death of Michael Lopez.⁹³ Finally, the report describes the case of Ricardo Cruciani, who hung himself with a sheet in a shared bathroom without intervention due to insufficient staffing; his unit lacked a “B” post officer on the day before and on the day of his death.⁹⁴

Tragically, DOC’s chronic dysfunction and indifference to the lives of the people in its custody is still evident. Michael Lopez, who passed away in DOC custody in July 2022, missed 16 medical appointments from the end of May until mid-July 2022, including one on the day before his death.⁹⁵ On August 25, 2022, video captured three uniformed DOC staff members watching as Michael Nieves slit his own throat, doing nothing for at least ten minutes, as Mr. Nieves bled out on the floor.⁹⁶

ARGUMENT

Petitioners seek an order holding Respondent in civil contempt for disobeying the December Order, which requires Respondent to “immediately comply” with its ministerial duty to provide each and every person in its custody with access to medical care, during the period February 2022 through October 2022.⁹⁷ A full year since the December Order, DOC continues to fail in its duty, even as DOC maintains that staff absenteeism—its previous excuse for failing to comply—has improved. As a result of DOC’s unlawful actions and omissions, Petitioners have suffered—and continue to suffer—grievous harm and prejudice to their rights. Petitioners are therefore entitled to an order holding DOC in contempt for failing to comply with the December Order from February through October 2022.

⁹³ *Id.* at 25.

⁹⁴ *Id.* at 21.

⁹⁵ *Id.* at 24.

⁹⁶ Ex V, Jan Ransom, *Man Held at Rikers Dies from Razor Wound After Guards Fail to Intervene*, NY Times, August 30, 2022.

⁹⁷ See NYSCEF Doc No. 81 at 6-7; see also Judiciary Law § 753 (authorizing courts to hold a party in civil contempt for a “violation of duty” and “for disobedience to a lawful mandate of the court” where “a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced[.]”).

Given Respondent's year-long failure to comply with the December Order, and substantial evidence that it will continue to delay and deny access to medical care to those in its custody, Petitioners are entitled to the maximum amount of fines available under the Judiciary Law to incentivize compliance. In the event that DOC still fails to comply after a contempt finding and an award of fines and Petitioners' attorney's fees and costs for this motion, this Court should exercise its inherent plenary and equitable powers to craft a remedy and enforce the judgment by holding an evidentiary hearing to determine the maximum number of people whom DOC can "receive and safely keep" as required by Correction Law § 500-c(4) and the December Order by ensuring access to medical care, and by issuing an order forbidding DOC from housing more than that maximum number of people in its facilities.

I. THE COURT SHOULD HOLD DOC IN CONTEMPT FOR THE PERIOD FROM FEBRUARY 2022 THROUGH OCTOBER 2022

Civil contempt is justified when: (1) there is "a lawful judicial order expressing an unequivocal mandate" in effect; (2) the party to be held in contempt knows about the order; (3) the party to be held in contempt disobeys the order; and (4) the prejudice to the rights or remedies of "a party to the litigation" is shown. *McCain v Dinkins*, 84 NY2d 216, 226 [1994].

In its May Contempt Order, this Court held that: (1) the December Order was a lawful order expressing an unequivocal mandate; and (2) DOC conceded knowledge of the December Order. Those findings are now law of the case and cannot be collaterally attacked. *See, e.g., C. v R.*, 65 Misc 3d 1205(A) [Sup Ct Kings County 2019] (treating facts established in prior decision as the law of the case, and citing authority to demonstrate that the law of the case doctrine prevents relitigating issues that have already been determined). Additionally, the Court found that Petitioners suffered prejudice by DOC's failure to comply with its duties to provide access to sick call and not to prohibit or delay inmates from health services during the period December 2021

through January 2022,⁹⁸ and the prejudice to Petitioners from delays and denial of access to medical care from February 2022 through October 2022 is indistinguishable from that suffered by Petitioners during the prior contempt period.⁹⁹ Thus, the only question for the Court on this motion is whether DOC disobeyed the December Order during the period February 1, 2022 through October 31, 2022.

On a motion for contempt, Petitioners must establish entitlement to relief by clear and convincing evidence.¹⁰⁰ “[O]nce the movant establishes a knowing failure to comply with a clear and unequivocal mandate, the burden shifts to the alleged contemnor to refute the movant’s showing, or to offer evidence of a defense”¹⁰¹ A “good faith attempt[] to comply with a court’s order is not a recognizable defense to a motion for contempt”¹⁰² Inability to comply with an order is not a defense to contempt unless “the respondent *was not at fault in creating the inability.*” *Matter of Benson Realty Corp. v Walsh*, 73 Misc 2d 889, 893 [Sup Ct NY County 1973] (internal quotations omitted) (emphasis added); *see also Matter of Lanaya B.*, 25 Misc 3d 981, 990, 2009 N.Y. Slip Op. 29380 [Fam Ct 2009] (quoting *United States v Swingline*, 371 F Supp 37, 45 [ED NY 1974]); *Matter of Kenneth R. (Harold S.)*, 64 Misc 3d 234, 251, 2019 N.Y. Slip Op. 29042 [Fam Ct 2019]; *Matter of Jamel B. (Monica J.)*, 53 Misc 3d 1206(A), 2016 N.Y. Slip Op. 51454(U) [Fam Ct 2016]. Where a party has the “authority or control to find a way to comply with the order,”¹⁰³ noncompliance is inexcusable.

⁹⁸ See NYSCEF Doc No. 126 at 5.

⁹⁹ Though the facts of three of the four elements showing DOC’s contempt are identical to those in the previous contempt motion, the evidence underlying the fourth element—disobedience of the Court’s December Order—materialized only after Petitioners filed their first contempt motion. DOC’s contemptuous acts highlighted here are therefore subsequent violations of which Petitioners had no knowledge at the time the first contempt motion was filed.

¹⁰⁰ See NYSCEF Doc No. 126 at 2-3 (citing *El-Dehdan v El-Dehdan*, 114 AD 3d 4 [2d Dept 2013], *affd*, 26 NT3d 19 [2015]).

¹⁰¹ *Id.* at 3 (quoting *El-Dehdan*, 114 AD3d at 17).

¹⁰² *Id.* at 4-5 (quoting *Matter of McCain v Dinkins*, 192 AD2d 217 [1st Dept 1993], *affd as mod*, 84 NY2d 216 [1994]).

¹⁰³ NYSCEF Doc No. 126 at 5 (citing *Badgley v Santacroce*, 800 F2d 33 [2d Cir 1986]).

1. The “No Escort” and “Maximum Safe Capacity” Non-Productions Alone Are Clear and Convincing Evidence of Disobedience with the December Order

The medical non-production numbers for February 2022 through October 2022 in the categories of “No Escort” and “Maximum Safe Capacity” are sufficient evidence alone to establish by clear and convincing evidence that DOC is in contempt of the December Order. DOC is “at fault in creating the conditions” that led to these violations of the December Order, *Benson Realty Corp.*, 73 Misc 2d at 893, and has “the authority or control” to prevent these violations,¹⁰⁴ yet has repeatedly failed to do so. As this Court found in the May Contempt Order, DOC failed to establish that it was impossible to comply with the December Order because of ongoing staff shortages, which DOC claimed caused the lack of escorts to bring people to clinic appointments.¹⁰⁵ Since the May Contempt Order, DOC’s rates of absenteeism have decreased,¹⁰⁶ meaning that DOC has a greater percentage of its staff available today than it did at the time of the May Contempt Order. Yet, DOC staff still fails to provide access to healthcare for the people in its custody. Similarly, if DOC does not have appropriate space or security to safely keep people in waiting areas before their scheduled medical appointments, that is its own administrative failing. It is incumbent on DOC to facilitate access to medical appointments, and DOC must address any space or safety concerns that impede people in custody accessing the clinic. There were 12,354 instances of non-production classified as “No Escort” and “Maximum Safe Capacity” from February 2022 through October 2022—an average of almost 1,400 instances per month.

¹⁰⁴ *Id.* at 5.

¹⁰⁵ *Id.* at 4.

¹⁰⁶ See Ex V, Daily Avg. & Staff on Sick Leave, *DOC Data Dashboard*, <https://www.nyc.gov/site/doc/about/doc-data-dashboard.page> [last accessed Dec. 15, 2022] (showing decreasing percentages of staff on sick leave for each month from January through August 2022, with the same percentage repeated for September 2022 and only a slight increase in October 2022).

February 2022. DOC admits at least 819 instances of non-production to medical appointments due to lack of escort in February 2022.¹⁰⁷ This conclusively establishes noncompliance with the December Order for February 2022. In connection with the first contempt motion, Chief Pressley admitted that a similar number (848) of non-productions to medical appointments due to lack of escort,¹⁰⁸ was a “rate of production [that] does not constitute substantial compliance” with the December Order.¹⁰⁹ Moreover, there were an *additional* 475 non-productions in February 2022 attributable to “Maximum Safe Capacity,” which brings the total number of undisputed instances of non-production attributable to DOC to nearly 1,300.¹¹⁰ This total exceeds the instances of non-production that the Court previously found unacceptable for December 2021 (1,061) and January 2022 (848).¹¹¹

March 2022. DOC admits at least 1,235 instances of non-production to medical appointments due to lack of escort in March 2022.¹¹² The “No Escort” figure, alone, dwarfs the number of instances of non-production that the Court found unacceptable for December 2021 (1,061) and January 2022 (848).¹¹³ In addition to 1,235 instances of non-production due to “No Escort,” DOC failed to produce people to the clinic an astounding *2,115* additional times in March 2022 as a result of “Maximum Safe Capacity,” for a total of *3,350* undisputed instances of non-production attributable to DOC in March 2022.¹¹⁴

¹⁰⁷ See NYSCEF Doc No. 142.

¹⁰⁸ As discussed, DOC has since provided new charts reporting 868 non-productions for December 2021. In any event, the Court has already determined that 848 non-productions due to lack of escorts, DOC’s originally-reported number for January 2022—does not constitute substantial compliance. See NYSCEF Doc No. 126 at 2, 5.

¹⁰⁹ NYSCEF Doc No. 91 ¶¶ 11, 16.

¹¹⁰ *Id.*

¹¹¹ See NYSCEF Doc No. 126 at 4-5.

¹¹² See NYSCEF Doc No. 142.

¹¹³ *Id.*

¹¹⁴ *Id.*

April 2022. DOC admits at least 1,465 instances of non-production to medical appointments due to lack of escort in April 2022.¹¹⁵ As in March, the “No Escort” figure, alone, is sufficient to show DOC’s noncompliance with the December Order. But DOC reported *another* 1,401 non-productions due to “Maximum Safe Capacity” in April 2022, for a total of **2,866** undisputed instances of non-production attributable to DOC.¹¹⁶

May 2022. DOC admits at least 759 instances of non-production to medical appointments due to lack of escort in May 2022.¹¹⁷ DOC also admitted that it failed to produce people to medical appointments on 1,441 occasions due to “Maximum Safe Capacity,” or a total of **2,200** undisputed instances of non-production attributable to DOC.¹¹⁸

June 2022. DOC admits at least 4 instances of non-production to medical appointments due to lack of escort in June 2022.¹¹⁹ In addition, DOC admits 738 non-productions due to “Maximum Safe Capacity,” for a total of 742 undisputed instances of non-production attributable to DOC.¹²⁰

July 2022. DOC admits at least 325 instances of non-production to medical appointments due to lack of escort in July 2022. DOC reported an additional 184 missed appointments due to “Maximum Safe Capacity,”¹²¹ for a total of 509 undisputed instances of non-production attributable to DOC.¹²²

¹¹⁵ *See id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Petitioners remain skeptical that there were only four instances of non-productions due to lack of available escorts in June, given that, in every other month for which Petitioners have offered data as evidence in this litigation, DOC reported hundreds or even thousands of such missed clinic appointments.

¹²⁰ *See Ex C.*

¹²¹ *See Ex F.*

¹²² *Id.*

August 2022. DOC admits at least 279 instances of non-production to medical appointments due to lack of escort in August 2022. DOC also admitted another 282 missed appointments classified as “Maximum Safe Capacity,”¹²³ for a total of 561 undisputed instances of non-production attributable to DOC.¹²⁴

September 2022. DOC admits at least 181 instances of non-production to medical appointments due to lack of escort in August 2022.¹²⁵ DOC also admitted another 275 missed appointments classified as “Maximum Safe Capacity,” for a total of 456 undisputed instances of non-production attributable to DOC.¹²⁶

October 2022. DOC admits at least 164 instances of non-production to medical appointments due to lack of escort in October 2022.¹²⁷ DOC also admitted another 212 missed appointments classified as “Maximum Safe Capacity,” for a total of 376 undisputed instances of non-production attributable to DOC.¹²⁸

Using DOC’s own data, these numbers of non-production to scheduled clinic appointments in the categories of “No Escort” and “Maximum Safe Capacity” conclusively establish violations of the December Order in the months of February, March, April, May, June, July, August, September, and October 2022, with DOC failing to produce people to care on at least **12,354** occasions.¹²⁹ The numbers further show that there has been *no meaningful improvement* in DOC’s

¹²³ See Ex G.

¹²⁴ *Id.*

¹²⁵ See Ex H.

¹²⁶ See *id.*

¹²⁷ See Ex E.

¹²⁸ *Id.*

¹²⁹ See NYSCEF Doc No. 142 (February through May); Ex C (June); Ex F (July); Ex G (August); Ex H (September); Ex E (October). As stated above, the publicly available data for the entire month of June 2022 shows a total of 1,277 non-productions classified as “Other,” which “includes but is not limited to instances where an incarcerated individual chooses to instead attend a work assignment, law library, school, religious services, or commissary, when maximum clinic capacity has been reached, when no escort is available, or when movement is limited due to a lockdown, search, or alarm.” Ex X, Publicly available June 2022 Non-Production Report at 2 n.3.

overall rate of production of people to their medical appointments since the December Order. Thus, DOC has shown its inability to comply with the law and “safely keep” the people in its custody.

2. The Record Is Replete with Other Evidence of DOC Violating the December Order

Although the Court can find that DOC is in contempt of the December Order by clear and convincing evidence from the 12,354 instances of non-production to medical appointments due to “No Escort” and “Maximum Safe Capacity” alone, DOC has also failed to comply with the December Order more often than those 12,354 instances.

For example, DOC reported a significant 2,146 non-productions classified as “Priority Medical Emergency” in June, July, August, September, and October 2022. It is incumbent on DOC to anticipate and provide sufficient staff to provide regular access to the clinic even where another person in custody is experiencing a medical emergency. *Cf. Benjamin v Malcolm*, 646 F Supp 1550, 1554 [SD NY 1986] (stating that it was DOC’s responsibility to plan for increases in the jail population with the onset of increased arrest rates for “crack” offenses).

Similarly, DOC reported an additional 41 non-productions classified as “Priority Mental Health Visit” in July 2022, another 4 in August 2022, another 6 in September 2022, and another 15 in October 2022. While Petitioners appreciate that DOC prioritizes discharge planning where appropriate, this planning, whenever possible, should not interfere with the provision of medical care. It is within DOC’s authority and control to prevent these conflicts and it must do so wherever possible to comply with its obligations to refrain from “prohibiting or delaying incarcerated persons’ access to care, appropriate treatment, or medical or dental services.”¹³⁰

¹³⁰ NYSCEF Doc No. 81 at 6-7.

The same is true for instances in which DOC fails to produce people to the clinic due to “Alarm,” “Lockdown,” and “TSO.” Although DOC has the duty to ensure safety in the facilities, it must—like every other correctional institution—ensure that its security operations do not cause large-scale denial of access to medical care.

It is reasonable for the Court to question whether there were a number of *additional* instances of disobedience of the December Order between February 1, 2022 and October 31, 2022 that are not reflected in DOC’s monthly non-production reporting and are therefore not easily identified. As discussed *supra*,¹³¹ Petitioners have shown that what are actually instances in which access is denied are incorrectly coded as “Production Refusal” with some frequency. Additionally, CHS data strongly suggests that DOC may be significantly underreporting the total number of non-productions to medical appointments, and Board of Correction investigations have revealed numerous instances in which DOC staff have falsified records to obscure their noncompliance with court orders and other requirements.

The Court should also consider the mounting evidence that DOC’s noncompliance with the December Order is contributing to numerous deaths in DOC facilities. The Board of Correction’s reports on deaths and suicides in custody highlight numerous DOC failings that played at least some role in several deaths, including non-productions to crucial medical appointments, repeated failure to provide “B” officers who could supervise the unit, the failure of some officers to provide first aid until other staff arrived, and failure to properly monitor people in custody who presented with acute mental health problems. Further, the Board of Correction Reports do not cover the numerous medical complications and worsening conditions that are caused by the widespread medical neglect. The December Order requires DOC not to “prohibit[]

¹³¹ See *supra* at 17-18.

or delay[] incarcerated persons' access to care, appropriate treatment, or medical or dental services.”¹³² DOC's repeated failure to protect the lives of people in its custody from medical and mental health emergencies is strong evidence of its continuing noncompliance and contempt.

While the undisputed “No Escort” and “Maximum Safe Capacity” numbers establish DOC's failure by clear and convincing evidence, this evidence of additional instances of disobedience reinforces the conclusion that DOC is in contempt of the December Order.

II. COMPENSATORY FINES SHOULD BE PAID TO AGGRIEVED CLASS MEMBERS FOR EACH VIOLATION

Just as the Court awarded fines to Petitioners for DOC's previous contemptuous conduct, this Court should award fines to class members for each instance that DOC failed to provide access to medical care during the period between February 1, 2022 and the end of October 2022. *See McCain*, 84 NY2d at 229 (ordering the City of New York to pay contempt fines to a class of homeless families for each night the City failed to provide adequate housing, as previously ordered); *see also New York City Coal. to End Lead Poisoning v Giuliani*, 173 Misc 2d 235, 236-42 [Sup Ct NY County 1997] (holding the City in civil contempt for ignoring “the mandates of both this court and the City Council,” and imposing a fine on the City accruing from the date of service of the order with notice of entry and continuing “until the City of New York is in compliance with that order,” and directing that the fines “be paid directly to the plaintiffs” on a monthly schedule).

In their previous contempt motion, Petitioners argued that the statutorily prescribed maximum fine of \$250 per non-production due to lack of escort, plus costs and expenses for the contempt motion, was the proper amount.¹³³ The Court ordered a compensatory fine of “\$100.00

¹³² NYSCEF Doc No. 81 at 6-7 (emphasis added).

¹³³ NYSCEF Doc No. 105 at 13.

for each missed escort to the infirmary, from December 11, 2021 through January 2022,” plus costs and expenses.¹³⁴ Petitioners reaffirm that the maximum fine of \$250 per instance of contemptuous conduct, plus costs and expenses, is warranted for DOC’s disobedience, particularly because this is the second time that Petitioners have been forced to seek this Court’s assistance in obtaining DOC’s compliance with the law and the December Order.

The fine imposed against a civil contemnor is designed to compensate or indemnify the aggrieved party, rather than to punish the contemnor. *See Ellenberg v Brach*, 88 AD2d 899, 902 [1982]. But section 773 of the Judiciary Law “undoubtedly support[s] the imposition of an additional penalty” for subsequent contemptuous conduct. *Commr of Cmty. Dev. of City of Rochester v Gray*, 186 AD2d 1076, 1076–77 [1992]. Courts therefore routinely award the statutory maximum of \$250 for successive contempt fines. *See e.g., Friendly Ice Cream Corp. v Great E. Mall, Inc.*, 51 AD2d 883, 883 [4th Dept 1976] (awarding statutory maximum fine of \$250 for contempt where “the second proceeding is based upon acts by defendant’s agents occurring after the first proceeding”); *Town of Ithaca v Franciamone*, 54 AD2d 776, 776 [3d Dept 1976] (finding petitioner in contempt for a second time and awarding statutory maximum of \$250 for second violation).

“Where multiple contumacious acts are engaged in, each violation is a separate contempt that warrants a separate fine.” *JKC v TWC*, 43 Misc 3d 1234(A), 2013 N.Y. Slip Op. 52319(U) [Sup. Ct. 2013] [table; text at 2013 WL 8633413, *2]. DOC’s contemptuous conduct in the months of February, March, April, May, June, July, August, September, and October 2022, comprises violations separate from those in December 2021 and January 2022. This Court is therefore free to impose the maximum fine of \$250 per violation, as provided by the statute. *See Matter of*

¹³⁴ NYSCEF Doc No. 126 at 6-7.

Ferrante v Stanford, 172 AD3d 31, 38-40 [2d Dept 2019] (awarding statutory maximum of \$250); *Matter of Barclays Bank v Hughes*, 306 AD2d 406, 408, *as amended* (Oct. 15, 2003) (same), *affd as modified sub nom. Barclays Bank, PLC v Hughes*, 761 NYS2d 493 [Sup Ct, App Div 2d Dept 2003 mem]; *Matter of Hanna v Turner*, 2001 N.Y. Slip Op. 50098(U), *14 [Sup Ct NY County 2001] (same), *amended* 2001 N.Y. Slip Op. 50111(U) [Sup Ct NY County 2001], *affd as modified*, 289 AD2d 182 [1st Dept 2001].

III. FOLLOWING A HEARING, THE COURT SHOULD EXERCISE ITS EQUITABLE POWERS TO ISSUE AN ORDER, REQUIRING DOC TO LIMIT THE POPULATION IN DOC CUSTODY.

Petitioners further move the Court to exercise its equitable and inherent plenary powers to issue an order in support of the December Order. Specifically, in the event that this Court finds DOC in contempt and that DOC is unable to purge itself, the Court should hold an evidentiary hearing within 30 days of any order finding DOC failed to purge itself of the contempt, to determine the maximum number of people DOC can “safely keep” in its custody to ensure timely access to medical care.¹³⁵ Following the hearing, and if so justified by the Court’s findings, the Court should set an appropriate population cap and order the reduction of the population to achieve the cap, prioritizing release to the community in the first instance.

This Court has the authority to issue such a further order in support of its December Order. In the event that statutory contempt fines fail to bring DOC into compliance, this Court has the inherent power to design “any remedy” that is adequate to enforce compliance with its judgment. *Cane v Herman*, 209 AD2d 368, 368 [1st Dept 1994] (“[A] Supreme Court Justice is vested with inherent plenary power . . . to fashion any remedy necessary for the proper administration of justice.” (quoting *People ex rel. Doe v Beaudoin*, 102 AD2d 359, 363 [3d Dept 1984] (internal

¹³⁵ See NYSCEF Doc No. 81 at 7.

citation omitted)); *see also Cold Spring Light, Heat & Power Co. v Selleck*, 256 NY 451, 456 [1931] (explaining that “Courts of equity undoubtedly have power to make such orders as may be necessary to carry out and give effect to their decrees” and that “a motion supported by affidavits setting forth the facts is ordinarily sufficient to obtain a further direction in the judgment”); *Doe v Dinkins*, 192 AD2d 270, 275 [1st Dept 1993] (discussing the Supreme Court’s “power, as a court of equity, to grant an injunction mandating conduct by municipal agencies”). Where, as here, a party has repeatedly violated an order, courts have exercised their inherent power to issue a “comprehensive order to insure against the risk of inadequate compliance.” *Hutto v Finney*, 437 US 678, 687 [1978] (approving the district court’s exercise of its inherent powers to order a 30-day time limit on the use of punitive isolation as remedy for past violations of its earlier orders); *National Law Ctr. v U.S. Veterans Admin.*, 98 F Supp 2d 25, 26-27 [D DC 2000] (granting a plaintiff’s motion for a further order enforcing the injunction and concluding that “[a] court’s powers to enforce its own injunction by issuing additional orders is broad, particularly where the enjoined party has not ‘fully complied with the court’s earlier orders.’” (quoting *Hutto*, 437 US at 687) (internal citation omitted)). Further, the Appellate Division has consistently approved remedies issued under a Supreme Court’s inherent plenary power. *See, e.g., Pastrana v Cutler*, 115 AD3d 725, 726-28 [2d Dept 2014] (holding that “the Supreme Court acted appropriately pursuant to its inherent plenary power to enforce compliance with its prior orders and to fashion a remedy for the proper administration of justice” by deviating from the governing by-laws and authorizing plaintiffs to call for and conduct a special meeting); *64 B Venture v Am. Realty Co.*, 194 AD2d 504, 504-05 [1st Dept 1993] (holding that “the Supreme Court properly exercised its equitable powers to appoint the receiver to operate the nursing home”).

If the shame of being held in contempt and the payment of fines does not spur DOC into actual compliance with the law (and it has not thus far), even in the face of deteriorating conditions and ever-increasing numbers of deaths among those in its custody, this Court should prevent further noncompliance by ordering a reduction of the population in DOC's custody to a level that DOC can competently accommodate. By DOC's own admission, a population reduction is warranted. In its Verified Answer, DOC conceded that "[r]educing the Department's population is [] critical to improving safety and security and allowing for the provision of required services, such as transport to clinic and improved access to medical care."¹³⁶ Despite this admission, from the date of that statement to this writing, DOC has taken no new measures to reduce the incarcerated population, and the population has *increased* by nearly 400 people.¹³⁷ Indeed, DOC claims that it has "inadequate space to safely hold" its current population in clinic waiting areas.¹³⁸ As a result, it "prohibit[s] or delay[s] access to care" in violation of the December Order.¹³⁹

A jail "that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society." *Brown v Plata*, 563 US 493, 511 [2011]. For that reason, where, as here, corrections officials have failed to ensure the health and safety of those in their facilities, courts have imposed population caps restricting the number of people held in confinement and ordered reductions of the population level. *See, e.g., Benjamin v Malcolm*, 495 F Supp 1357, 1365 [SD NY 1980] (ordering that the population of a DOC detention facility "be reduced to 1,200"); *Ambrose v Malcolm*, 414 F. Supp. 485, 495 [SDNY 1976] (imposing a population cap at the Bronx House of Detention); *Fambro v*

¹³⁶ NYSCEF Doc No. 75, answer ¶ 117.

¹³⁷ *See generally* NYSCEF Doc No. 129 (describing the remedial measures taken in an attempt to come into compliance); *see also* Ex Y, People in Jail in New York City: Daily Snapshot, <https://greaterjusticenyc.org/nycjail/> (comparing the population from 10-29-2021 to 12-16-2022, and showing population increase from 5,496 persons in custody to 5,870 persons in custody as of this writing).

¹³⁸ NYSCEF Doc No. 140 ¶ 20.

¹³⁹ *See* NYSCEF Doc No. 81 at 7.

Fulton Cnty, Ga., 713 F Supp 1426, 1430 [ND Ga 1989] (entering a release order, but only after a contempt finding, daily fines, and other coercive measures failed to cure the unconstitutional conditions). In analogous situations involving homeless shelters, New York Supreme Courts have exercised their equitable powers to impose population caps and order municipal officials to reduce population levels to protect the health and safety of shelter residents. *See, e.g., Doe*, 192 AD2d at 270-71 (finding that the “Supreme Court has the power, as a court of equity,” to direct “the municipal defendants to reduce the population at two homeless shelters to 200 beds each, to cease the placement of individuals in certain areas of one of the shelters and to cure existing fire code violations” and affirming that directive); *see also Barnes v Koch*, 136 Misc. 2d 96, 100-02 [Sup Ct NY County 1987] (prohibiting the placement of families in a shelter with lead paint contamination for more than 30 days and barring the placement of families with a child under seven in that shelter for any amount of time).

This Court thus may set a population cap in DOC facilities. Such a population cap would ensure compliance with its December Order and protect the integrity of that order and the health and safety of class members. If DOC cannot purge itself of contempt within 30 days of a contempt finding, it will have proven itself incapable of safely keeping the current population, demonstrating the need for a population cap. *See Plata*, 563 US at 500 (observing that “it became apparent that a remedy for the constitutional violations would not be effective absent a reduction in the prison population”); *Hutto*, 437 US at 687 (“If [prison officials] had fully complied with the court’s earlier orders, the present [stringent remedy] might well have been unnecessary. But taking the long and unhappy history of the litigation into account, the court was justified in entering a comprehensive order to insure against the risk of inadequate compliance.”).

If DOC does not purge itself of contempt within 30 days, the Court should hold an evidentiary hearing to determine the maximum number of people that DOC can safely keep in custody to ensure timely access to medical care and order a population cap and the reduction of the population to achieve that cap, prioritizing releases to the community in the first instance. Such a population cap and accompanying population reduction would “serve the salutary purpose of forcing all of the various state and local agencies who either have a need to place people in confinement or the responsibility for providing detention facilities, or both, to face up to the challenge of making alternative arrangements.” *Badgley v Varelas*, 729 F2d 894, 902 [2d Cir. 1984] (ordering county officials to comply with population limits set forth in a consent judgment by prohibiting them from accepting any person in the Nassau County Correctional Center until its population reached no more than 808 total people and, after that limit was reached, accepting no person that would increase the population above that limit). Whatever plans DOC may now purport to have in response to this application, this Court is “not required to wait to see whether [its] more recent efforts would yield equal disappointment.” *Plata*, 563 US at 516; *see also Duran v Elrod*, 713 F2d 292, 298 [7th Cir 1983] (affirming district court’s release order that was entered after barely one year of noncompliance with consent judgment). Enough is enough.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court: (a) find DOC in contempt for its past and ongoing violations of the December Order; (b) award a contempt fine to aggrieved class members in the sum of (i) \$250 for the 12,354 instances of denial of access to medical care in the months of February, March, April, May, June, July, August, September, and October 2022 due to DOC’s failure to provide sufficient escorts to bring class members to medical care and failure to provide adequate space and security at the clinics to permit people to safely wait for their scheduled medical appointments, and (ii) \$250 for any other instance of DOC’s

disobedience with this Court's December Order in the months of February 2022 through October 2022 that this Court finds by clear and convincing evidence to exist; (c) order that DOC shall pay the awarded contempt fines to the aggrieved class members; (d) Order that, in the event DOC is unable to purge itself of contempt within 30 days of the entry of the Court's contempt order, the parties shall appear for an evidentiary hearing to be scheduled within 30 days of the entry of any order finding DOC failed to purge itself of contempt and provide testimony and exhibits regarding the maximum number of people that DOC can safely keep by ensuring timely access to medical care, to aid the Court in setting an appropriate population cap and issuing related orders reducing the population to achieve the cap; (e) award Petitioners attorneys' fees and expenses incurred in connection with this contempt motion and in further proceedings related to the determination of the population cap for DOC facilities; and (f) award any additional relief the Court finds to be just and appropriate.

Dated: December 19, 2022
New York, New York

/s/ Katherine Kelly Fell
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