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

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Petitioners Joseph Agnew, Anthony Gang, Tyrone Greene, 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 (Class Counsel), respectfully submit this memorandum of law in support of their Order to Show Cause why a judgment should 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 (the Order), and (b) impose a contempt fine on DOC of $250 per instance that DOC has failed and continues to fail to comply with the Order, payable to aggrieved Petitioners; and (c) award Petitioners' attorneys' fees and costs for this motion.

PRELIMINARY STATEMENT

On December 3, 2021, this Court granted Petitioners' Article 78 petition to compel Respondent New York City Department of Correction to comply with its ministerial duties to provide people in its custody with access to medical care, and to provide proof of the same within one week of the order. Today, nearly two months since this Court's Order, Respondent still has not complied with its ministerial duties to provide access to medical care inside New York City's jails. Indeed, on January 26, 2022, Respondent provided Petitioners with an affidavit confirming that it is not in compliance with the Court's Order and confirming that people in its custody did not receive access to medical care over 7,000 times in December 2021 alone, *at least* 1,061 instances of which DOC concedes are due to its failure to provide an escort to bring them to medical appointments. Egregiously, Respondent's practice of denying people access to medical care intensified and the access problems *worsened substantially* after the Court's Order. DOC's

medical non-production numbers due to officer non-availability in December 2021 are *higher* than those in October and November 2021, and DOC's January 26 production portends similarly poor numbers for January 2022.

Meanwhile, people in DOC custody have been suffering and dying. Sixteen men died in Respondent's custody in 2021, including two, Malcolm Boatwright and William Brown, who died after the Court issued its Order. The Court's Order was aimed at remedying Respondent's failure to provide incarcerated people with access to medical care. This failure exacerbates the already-deplorable jail conditions Petitioners described in their October 2021 petition. Yet Respondent concedes it has repeatedly violated the Order, allowing the suffering to continue. DOC's flagrant disregard for the law and this Court's Order cannot continue without grave and deadly harm to those who are entrusted to DOC's care. Petitioners respectfully request that the Court hold DOC in contempt and enter the requested relief and any additional relief that the Court deems justified.

FACTS

DOC Has Failed to Provide Access to Medical Care to Those in Its Custody

The conditions in the City's jails continue to be as deplorable as Petitioners detailed in their October 2021 petition: unsanitary, unsafe, and a breeding ground for COVID-19 and other diseases.[1] For more than a year now, the dysfunction affecting City jails—including mass staff absenteeism and DOC mismanagement—has snowballed into a humanitarian crisis where thousands of people are unable to access medical care.[2] Despite this Court's December 3 Order requiring DOC to immediately provide those in its custody with access to medical care, *see* Order at 6-7*,* (NY St Cts Elec Filing [NYSCEF] Doc. No 81), the crisis has persisted, and thousands of

[1] *See* Supplemental Affirmation of Kelsey De Avila, dated January 30, 2022 (Jan. 30, 2022 De Avila Aff) ¶¶ 15-21.

[2] *See id.* at ¶¶ 13-27.

people face ongoing harm.[3] In January, faced with inhumane conditions including the inability to access medical care, people incarcerated on Rikers Island resorted to refusing to eat meals in protest.[4]

Through its statutorily mandated monthly reporting and an affidavit of the Chief of Facility Operations for the City's jails dated January 26, 2022, DOC has admitted that it is not complying with the Court's Order to provide those in DOC's custody with access to medical care. As required by Local Law 132 of 2019, DOC publishes a monthly report showing the number of times people in custody were not produced to their medical appointments and categorizing the reasons for these non-productions. A non-production is categorized as "Other" when, among other reasons, "an escort is not available[.]"[5] The earliest publicly available report of this kind is from June 2020, approximately three months into the pandemic.[6] In that report, DOC classified 175 instances of non-production as "Other," including the lack of available escort.[7] By December 2020, the number of people not produced for "Other" reasons including when an escort was not available had ballooned to 1,533; in June 2021 it was 5,065; and in September 2021, the month before Petitioners filed this action, it was 1,524.[8] In October and November 2021, the reported non-production numbers in this category dropped slightly (490 and 362 instances, respectively).[9] On January 26, 2022, DOC supplied Petitioners with medical non-production numbers for December 2021 in a manner that provides some additional detail about the causes for non-production falling

[3] *See id.*

[4] *See* Affirmation of Katherine Kelly Fell in Support of Contempt (Fell Aff), Ex 14 (Matt Katz, *Rikers Hunger Strike Enters Fifth Day*, GOTHAMIST [Jan. 12, 2022]).

[5] *See, e.g.*, Fell Aff Ex 6 (June 2020 Non-Production Report).

[6] *See id.*

[7] *See id.*

[8] *See* Fell Aff Exs 7, 8, 9 (Dec. 2020, June 2021, and Sept. 2021 Non-Production Reports).

[9] *See* Fell Aff Exs 10, 11 (Oct. 2021 and Nov. 2021 Non-Production Reports).

into the "Other" category.[10] That report confirmed that *at least* 1,061 of the instances of medical non-production that month were caused by DOC's failure to provide security staff to escort people to their medical appointments.[11] The report also specifies another 170 instances of medical non-production that month for "Other" reasons.[12] For this reason, the 1,061 known instances of non-production due to failure to provide an escort represents *at least* a 193% increase in non-productions when compared to the "Other" category encompassing "no available escort" in November.[13]

The most recent non-production numbers were produced to Petitioners in this litigation as an exhibit to a January 26, 2022 affidavit signed by Ada Pressley, Bureau Chief of Facility Operations for DOC.[14] In the sworn statement, Chief Pressley conceded that she believes DOC's current rate of production to medical appointments in December "does not constitute substantial compliance with the pertinent directives to provide timely access to the clinics."[15] The affidavit also gives reason to doubt that the numbers for January 2022 will be improved in any material respect.[16]

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[10] *See* Fell Aff Ex 4 (Jan. 26 Production (Pressley Aff Ex A)).

[11] *See id.* As explained in the December 2021 Monthly Report, DOC's numbers of instances of non-production do not represent unique individuals. *See id.* As such, some individuals may have multiple instances of non-production to a medical appointment because of "No Escort."

[12] *See id.*

[13] *Compare* Fell Aff Ex 4 (Jan. 26 Production) *with* Fell Aff Ex 11 (Nov. 2021 Non-Production Report).

[14] *See* Fell Aff Ex 4 (Jan. 26 Production (Pressley Aff Ex A)).

[15] *Id.* (Pressley Aff ¶ 16). The affidavit was produced to Petitioners after many weeks of ultimately unsuccessful negotiation between the parties about the type of evidence and frequency of production that Respondent would make to allow Petitioners to evaluate Respondent's substantial compliance with the Court's December 3 Order. Respondent has consistently refused to provide any primary documentation of reasons why a person was denied access to medical care, insisting that Petitioners rely only on summary data compiled by DOC in an opaque process.

[16] *See* Fell Aff Ex 4 (Jan. 26 Production, p. 5 (Pressley Aff ¶ 13)) ("I believe the no-escort notations were affected by the following circumstances. First, the months of December (and January) are periods in which significant numbers of staff schedule vacations around the holidays.").

Because of clear discrepancies and a pattern of poor quality in DOC data, it is also likely that the December non-production rate due to DOC's failure to escort incarcerated people to their medical appointments far exceeds DOC's reported number of 1,061 instances. In its December 2021 report, DOC reported that there were 5,268 instances where people refused to go to their medical appointment.[17] But counsel for Petitioners frequently hears from people in custody, and did so even before bringing this action, that many documented "refusals" are false.[18] In many instances, people are never told of an appointment or offered an escort—instead they only learn of the missed appointment when their attorneys ask whether they refused to go to the clinic.[19]

Petitioners have also received confirmation *through this litigation* that the anecdotal reports that Petitioners' counsel have long received about the inaccuracy of DOC's non-production data are true. On December 13, 2021, DOC produced documents to Petitioners that purported to show DOC's compliance with the Order as to just the four named Petitioners (the December 13 Production).[20] However, DOC's showing was plainly unreliable, as Petitioners' counsel promptly advised Respondent.[21] Mr. Agnew's medical records, for example, showed four instances of non-production to medical appointments in October and November 2021 that were not reflected in DOC's December 13 Production, which purportedly documented all instances of production and non-production for the named Petitioners.[22] Another entry in DOC's December 13 Production

[17] *See* Fell Aff Ex 12 (Dec. 2021 Non-Production Report).

[18] *See* Jan. 30, 2022 De Avila Aff ¶ 26; *see also* Oct. 4, 2021 Aff of Kelsey De Avila [NYSCEF Doc. No 4], ¶ 26.

[19] *See id.*

[20] *See* Fell Aff Ex 1, (Dec. 13, 2021 letter from A. Yacyshyn).

[21] *See* Fell Aff Ex 2 (Dec. 21, 2021 letter from K. Fell, et al.); Fell Aff Ex 15 (Jan. 31, 2022 letter from V. Vela, et al.). Petitioners advised DOC that the inconsistencies in the December 13 production belied any claim of substantial compliance. Although Respondent's counsel committed to looking into these discrepancies, Petitioners' counsel has not received any further information from DOC or its counsel.

[22] *See id.*

stated that Correctional Health Services (CHS) cancelled a November 2021 medical appointment of Mr. Agnew's, but Mr. Agnew's medical records reflect that he was not produced by DOC.[23] Mr. Gang's medical records showed two instances in November and December 2021 where he was not produced to medical appointments, but neither non-production appears in DOC's December 13 Production.[24] Another entry in DOC's December 13 Production states that Mr. Gang did not attend a medical appointment in November due to a court appearance, but a thorough review, including of public court records, revealed that Mr. Gang did not have a court appointment that day.[25] Mr. Gang's medical records also reflect that he was not produced to two different medical appointments in November 2021, while DOC's December 13 Production states, respectively, that Mr. Gang *was* produced to one of those appointments and that the other was "rescheduled" by CHS.[26] The number of instances where DOC underreported non-production in just the December 13 production alone—which was only for *four people* (among a population of nearly 6,000) and for only a *limited period* of time (of approximately six weeks)—demonstrates that DOC's poor recordkeeping compounds its failure to provide access to medical care as required by law and this Court's Order.

In addition to DOC's December report and Chief Pressley's affidavit, Petitioners' counsel received hundreds of reports from class members about denials of access to care. These include situations where class members' repeated requests for care were simply unanswered, where CHS confirmed appointments but DOC never provided an escort, where DOC never provided an escort for a person to go to a scheduled surgery, where CHS ordered daily medication or other medical

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.*

treatment provided at the clinic but DOC failed to transport the person, and dozens of other examples.[27] These types of denials of care pose serious risks to class members and/or have resulted in extremely grave outcomes, such as one individual with a tooth abscess that is so severe that he is having difficulty eating or sleeping and another individual who is not receiving regular access to lifesaving HIV medication that must be taken consistently to be effective.[28] Petitioners' counsel have been notifying Respondent's counsel about these reports of denial of care on a rolling basis.[29]

Apart from the examples collected by Petitioners' counsel, Petitioners have repeatedly requested information regarding the death of the two people who died in DOC custody since this Court's Order.[30] To no avail, Petitioners requested information regarding the death of Malcolm Boatwright, which may have been caused by a delay in responding to a medical issue, as well as any information regarding the circumstances of the death of William Brown, who also died in DOC custody on December 14, 2021.[31] Both Mr. Boatwright and Mr. Brown were class members in this case and had been represented in other matters by either The Legal Aid Society, Brooklyn Defender Services, or both.[32] The deaths of Mr. Boatwright and Mr. Brown underscore the gravity of the consequences of DOC's noncompliance, as countless other people are at risk of the same outcome. And this is all occurring in the context of worsening conditions in the jails, even beyond the historically deplorable environment. For example, in a recent article in the New York Times, people in custody reported that "vermin such as mice and water bugs frequently interrupted [their]

[27] *See* Jan. 30, 2022 De Avila Aff ¶¶ 15-27; *see also* January 30, 2022 Affidavit of Sarah Petrick (Petrick Aff) ¶¶ 9, 12-15.

[28] *See* Jan. 30, 2022 De Avila Aff ¶¶ 17-19; Petrick Aff ¶¶ 9, 12-15.

[29] *See* Fell Aff Ex 3 (Jan. 3, 2022 letter from K. Fell, et al.); Fell Aff Ex 5 (Jan. 31, 2022 letter from K. Fell, et al.).

[30] *See* Fell Aff Ex 2 at 4.

[31] *See id.*

[32] *See id.*

sleep," they "had not been allowed outside for weeks," they were "were compelled to clean up blood and feces on the floor," that there is "black mold in the bathrooms and mildew on the carts that were used to serve food," and violence is "rampant."[33]

The daily experiences of class members, data collected and provided by DOC, and Respondent's own admissions demonstrate that DOC is not in compliance with the Court's December 3 Order.[34]

ARGUMENT

Petitioners seek an order holding Respondent in civil contempt for disobeying the Court's December 3 Order requiring Respondent to "immediately comply" with its ministerial duties to provide those in its custody with access to medical care. *See* Order at 6-7 [NYSCEF Doc. No. 81]; *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[.]"). Petitioners are entitled to an order holding Respondent in civil contempt because the Court's December 3 Order is "a lawful judicial order expressing an unequivocal mandate," the Respondent "had knowledge of the order" and "disobeyed" it, and the

[33] Fell Aff Ex 13 (Jonah E. Bromwich, *Hundreds at Rikers Protest Conditions, Citing Covid and the Cold*, N.Y. TIMES [Jan. 11, 2022]).

[34] In addition to ordering Respondent to comply with its obligations to provide access to medical care, the Court ordered Respondent to provide proof of substantial compliance with the same within one week. *See* Order at 7, [NYSCEF Doc. No 81]. As a courtesy, Petitioners stipulated to a brief extension of Respondent's deadline. Nonetheless, to date Respondent has not provided proof of substantial compliance (and indeed confirmed in Chief Pressley's affidavit of January 26 that it is *not* in substantial compliance). Accordingly, Respondent has been in violation of the Court's Order to provide evidence of substantial compliance since at least December 20, 2021. *See* [NYSCEF Doc. No 84] (reflecting a proposed order to extend Respondent's deadline to provide evidence of proof of substantial compliance to December 20, 2021).

record demonstrates "prejudice" to the rights or remedies of the Petitioners because they were denied access to medical care.[35] *McCain v Dinkins,* 84 NY2d 216, 226 [1994].

As relief for contempt, courts must order a fine or imprisonment or both, s*ee* Judiciary Law § 770, and either sanction must be aimed at compensating the aggrieved party. *Matter of McCormick v Axelrod*, 59 NY2d 574, 583, *as amended by*, 60 NY2d 652 [1983] (per curiam) (explaining that "any penalty imposed [for civil contempt] upon the contemnor is designed to compensate the injured private party for the loss of or interference with that right" (citation omitted)). Here, for the reasons discussed below, Petitioners are entitled to the statutorily prescribed fine of $250 multiplied by the 1,061 undisputed instances of non-production to a medical appointment because of lack of escort, payable to each class member who was not produced. *See* Judiciary Law § 773; *Weissman v Weissman*, 131 AD3d 529, 529-31 [2d Dept 2015] (citing Judiciary Law § 773 and approving the lower court's imposition of a multiple of the statutorily prescribed fine of $250 "for multiple acts of disobedience" involving 11 separate parties (internal quotation marks and citation omitted)).

I. THE COURT SHOULD HOLD DOC IN CONTEMPT.

As the Court of Appeals has explained, civil contempt is justified when the following factors are established: (1) that "a lawful judicial order expressing an unequivocal mandate" is in effect; (2) that the party to be held in contempt knows about the order; (3) that the party to be held in contempt disobeys the order; and (4) that prejudice to the rights or remedies of "a party to the

[35] "[C]ontempt must be proven by clear and convincing evidence." *Riverside Cap. Advisors, Inc. v First Secured Cap. Corp*., 28 AD3d 455, 456 [2d Dept 2006] (citations omitted). In a civil contempt proceeding, the Court has discretion to determine whether to hold a hearing. *Matter of Bonnie H*, 145 AD2d 830, 830-32 [3d Dept 1988] (holding that, in a civil contempt proceeding, "[w]hether an evidentiary hearing was required rested wholly within the discretion of the court.") (citation omitted). But courts typically do not hold a hearing where, as here, there is no factual dispute over the Respondent's disobedience. *Metzger v Metzger,* 206 AD2d 352, 353 [2d Dept 1994] (holding that a contempt hearing is not required where there is no factual dispute); *see also Bowie v Bowie,* 182 AD2d 1049, 1050 [3rd Dept 1992] (holding that a contempt hearing "need only be conducted if a factual dispute exists which cannot be resolved on the papers alone.")

litigation" is shown. *McCain,* 84 NY2d at 226; *see also McCormick*, 59 NY2d at 583. The facts supporting these four requirements for civil contempt are not in dispute. First, the Court's December 3 Order is a "a lawful judicial order expressing an unequivocal mandate" and it remains in effect. *See* Order at 6-7 [NYSCEF Doc. No 81]. No party has appealed the Court's Order to challenge its mandate that DOC immediately provide those in its custody with access to medical care.

Second, in the affidavit of Chief Pressley, DOC concedes knowledge of the Order.[36] In addition, the December 3 Order was served on DOC's counsel with notice of entry, and they acknowledged receipt,[37] thus further establishing DOC's knowledge. *See McCormick*, 59 NY2d at 585 ("conclud[ing] that all parties or their counsel, had sufficient knowledge, actual or imputed, of the terms of the stay, to render their conduct in disregard of the stay contumacious."). Indeed, following the Court's December 3 Order, the parties' counsel had numerous discussions about DOC's obligations under the Order.[38]

Third, DOC itself concedes it is not in compliance with the Court's Order. In its December 2021 monthly report, DOC admits to at least 1,061 instances of non-production to medical appointments due to lack of escort.[39] In her affidavit, Chief Pressley further admits such disobedience by acknowledging these instances of non-production and concluding that the rate of production to medical appointments in December "does not constitute substantial compliance with the pertinent directives to provide timely access to the clinics."[40] That DOC has repeatedly violated

[36] *See* Fell Aff Ex 4 (Jan. 26 Production, p. 2 (Pressley Aff ¶ 3)).

[37] *See* [NYSCEF Doc. No 82]; Fell Aff ¶¶ 4-5.

[38] Fell Aff ¶ 6.

[39] *See* Fell Aff Ex 12 (Dec. 2021 Non-Production Report).

[40] Fell Aff Ex 4 (Jan. 26 Production, pp. 5-6 (Pressley Aff ¶¶ 11, 16)).

the Court's Order is further corroborated by numerous reports from class members. *See supra* pp 7-8.

In her affidavit, Chief Pressley claims the non-production numbers as being affected by "exceptional staffing difficulties due to reasons associated with the COVID-19 pandemic" and a recent "spike in absenteeism" in light of the Omicron variant.[41] Chief Pressley offers that DOC has tried to "encourage, or in some cases, compel, employees to report to their post."[42] Chief Pressley further asserts that the high rate of medical non-production in December is attributable to "significant numbers of staff schedul[ing] their vacations around the holidays."[43] These explanations are immaterial because they do not excuse the repeated and ongoing violations of this Court's Order. *See McCain*, 84 NY2d at 227 ("Respondent's argument that he acted in good faith . . . is of no avail . . . [and] once the order is made, respondent has no discretion but to comply with that order" (internal quotation marks and citation omitted)); *Hush v Taylor*, 121 AD3d 1363, 1365-66 [3d Dept 2014] ("No finding of willfulness or deliberate disregard is required to sustain a civil contempt determination; the mere act of disobedience, regardless of motive, is sufficient . . . if such disobedience defeats, impairs, impedes or prejudices the rights of a party" (internal quotation marks and citation omitted)). Moreover, these explanations provide no comfort to the many class members who are languishing in pain and discomfort because they cannot access medical care. Respondent cannot rely on its own administrative failures to excuse non-compliance with a court order. *See, e.g.*, *Matter of Benson Realty Corp. v Walsh*, 73 Misc 2d 889, 893 [Sup Ct, New York County 1973] (holding the Housing and Development Administration of the City of New York in contempt, despite the Administration's claim that it was "unable to comply" with the court's order,

[41] Fell Aff Ex 4 (Jan. 26 Production, pp. 3-4 (Pressley Aff ¶¶ 13)).

[42] Fell Aff Ex 4 (Jan. 26 Production, pp. 3-4 (Pressley Aff ¶¶ 14)).

[43] Fell Aff Ex 4 (Jan. 26 Production, pp. 3-4 (Pressley Aff ¶¶ 13)).

because the inability to comply arose "in large part" from administrative problems, including "lack of personnel."). "Governmental entities and their agents should, like any other party, be held to compliance and sanctions for indifference, dereliction or defiance of judicial decrees." *McCain*, 84 NY 2d at 228.

Finally, that DOC's non-compliance has prejudiced Petitioners is beyond dispute.[44] "To satisfy the prejudice element, it is sufficient to allege and prove that the contemnor's actions were calculated to or actually did defeat, impair, impede, or prejudice the rights or remedies of a party." *Astrada v Archer*, 71 AD3d 803, 806-07 [3d Dept 2010] (citations omitted). The Court's December 3 Order sought to protect the rights of people in DOC custody to access medical care and to remedy DOC's failure to provide this basic right and need. But, with at least 1,061 non-productions to medical appointments because of DOC's failure to provide an escort, DOC has defeated, impaired, impeded, and prejudiced the rights of class members and frustrated the remedy that this Court granted. Each time a class member is denied access to medical care, their right is defeated, impaired, impeded, and prejudiced. As discussed above, denying class members access to medical care also needlessly prolongs their pain, discomfort, and physical and mental anguish. *See supra* pp 7-8. It also endangers their health and their very lives. *See id.*

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

This Court should award fines to class members for each instance that DOC failed and continues to fail to provide them with access to medical care. *See, e.g., 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*

[44] *See, e.g.*, Jan. 30, 2022 De Avila Aff ¶¶ 15-27; Petrick Aff ¶¶ 12-19.

Coal. to End Lead Poisoning v Giuliani, 173 Misc 2d 235, 236-42 [Sup Ct, New York 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).

Because DOC has repeatedly and consistently disobeyed the Court's Order by failing to ensure people have access to medical appointments, Judiciary Law § 773 and the caselaw interpreting it provide that the proper fine is the statutorily prescribed amount of $250, plus costs and expenses for the contempt motion, for each person who was not produced to a medical appointment, multiplied by each act of non-production. *See Town of Southampton v R.K.B. Realty, LLC*, 91 AD 3d 628, 628-31, 936 NYS 2d 228 [2d Dept 2012] (citing Judiciary Law § 773 and holding that the lower court "correctly calculated the aggregate fine by multiplying the maximum statutory fine ($250) by the number of individual acts of contempt, and by the number of individual 'aggrieved' plaintiffs" for a total fine of $13,750) (citations omitted); *see also Weissman*, 131 AD3d at 529-31 (holding that a multiple of the prescribed fine of $250 "may be imposed for multiple acts of disobedience.") (internal quotation marks and citations omitted); *In re Lanaya B*., 25 Misc 3d 981, 982-94 [Fam. Ct. 2009] (holding ACS in civil contempt and directing it to pay the aggrieved mother the Judiciary Law's prescribed amount of $250 for each of the nine days that she lost visiting and bonding time with her newborn daughter, totaling $2,250 plus costs and expenses, because ACS failed to comply with the court's orders).

Petitioners respectfully ask this Court to (1) award a contempt fine of $250 multiplied by the 1,061 instances of non-production due to lack of escort, to which DOC itself concedes, totaling $265,250, payable to class members in accordance with item (3); (2) award fines for each instance

of non-production because of lack of escort beginning January 1, 2022 and continuing until DOC complies with its ministerial duties, and this Court's December 3 Order, by providing everyone in its custody with access to medical care, payable to class members in accordance with item (3); (3) direct DOC to accurately identify each person who was or is denied a medical appointment or medical care since December 3, 2021 because of lack of escort (and if inaccurately identified, to pay correct persons sums due following a finding from this Court that DOC failed to accurately identify such persons in the first instance), and pay them, in a manner to be negotiated by the parties and submitted to the Court for its approval within five (5) days of the Court's order finding Respondent in contempt, (a) the amount due to class members for each instance that they were denied medical care between December 3, 2021 and December 31, 2021 (*i.e.*, $250 times the number of denials) within 30 days of the contempt order and (b) $250 per instance that they are denied medical care starting on January 1, 2022 and continuing thereafter until DOC complies with the Court's December 3 Order and its ministerial duties by providing everyone in its custody with access to medical care, payable on the first day of every month; (4) direct DOC to provide Petitioners with primary documentation sufficient to demonstrate the authenticity of any purported class member refusal to attend medical appointments, on the last day of each month during the pendency of this litigation; and (5) schedule a court appearance in this matter within 30 days of the contempt order so Petitioners may be heard on alternative applications for relief if DOC continues to violate the Court's Order.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court find the Department of Correction in contempt for its past and ongoing violations of the December 3 Order; award a contempt fine to aggrieved class members in the sum of $250 per each instance that DOC failed or continues to fail to comply with the Order, along with the relief accompanying such

awards requested herein; schedule an appearance for the parties within 30 days of any contempt order so that Petitioners may be heard on alternative forms of relief if DOC continues to violate the order, including, as may be appropriate, release of class members; award Petitioners their attorneys' fees and expenses for this contempt motion; and any additional relief the Court finds to be just and appropriate.

Dated: February 1, 2022
New York, New York

/s/ *Katherine Kelly Fell*

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