

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into between the parties in *Jones v. Martinez*, Case No. 37-2021-00010648-CU-MC-CTL. The plaintiffs are Terry Leroy Jones and Gabriel Campos. The defendant is the San Diego County Sheriff, in his or her official capacity – currently Kelly A. Martinez. The case concerns protections from COVID-19 for people in custody in the San Diego County Jail. Except as otherwise specified, defined terms shall have the meanings set forth in this Agreement.

PROCEDURAL HISTORY

- A. On or about March 10, 2021, Plaintiff Jones filed a putative class action Petition for Writs of Mandate and Habeas Corpus and Complaint for Injunctive and Declaratory Relief in the Superior Court of California, County of San Diego.
- B. On or about April 2, 2021, Plaintiffs filed a First Amended Petition for Writs of Mandate and Habeas Corpus and Complaint for Injunctive and Declaratory Relief (“FAP”).
- C. On or about July 16, 2021, the Court overruled Defendant’s Demurrer to the FAP.
- D. On or about March 4, 2022, the Court denied without prejudice Plaintiffs’ Motion for Preliminary Injunction.
- E. On or about April 25, 2022, the Court granted Plaintiffs’ Motion for Class Certification, certifying a Pre-Trial Class (with a Medically Vulnerable Subclass), a Post-Conviction Class (with a Medically Vulnerable Subclass), and a Disability Class, and appointing Plaintiffs’ counsel as class counsel.
- F. On or about December 12, 2022, the Court denied Defendant’s Motion for Summary Judgment.

DEFINITIONS

- A. The term “**Class Member**” means an individual incarcerated in the San Diego County Jails at any time while this Agreement is in place. A person is only a Class Member while they are incarcerated in the San Diego County Jails but not after release. A Class Member as defined in this Agreement may be a member of any of the classes or subclasses certified in this matter.
- B. The term “**Classification Interview**” means the interview conducted by San Diego Sheriff’s Department staff with individuals who are being newly booked into the San Diego County Jails as a part of the booking and intake process.
- C. The term “**COVID-19 Community Transmission Levels**” means the level of transmission of COVID-19 as determined by the Centers for Disease Control and Prevention (hereinafter “CDC”).

- D. The term “**Defendant**” means the San Diego Sheriff in his or her official capacity, which includes the San Diego Sheriff’s Department.
- E. The term “**High-Quality Masks**” means masks or respirators that filter 94% or more of airborne particles (e.g., N95, KN95 and KF94 respirators or masks/respirators providing the equivalent protection). “High-Quality Masks” shall not include cloth masks.
- F. The term “**High-Risk**” means to be at heightened risk of severe illness or death from COVID-19 due to age or underlying medical condition.
- G. The term “**High-Risk Housing**” means a housing module or unit within the San Diego County Jails where **Defendant** houses Class Members it deems to be **High-Risk** and which contain heightened protections against COVID-19 for individuals housed therein.
- H. The term “**Transmission Within the San Diego County Jails**” means there are 10 or more active COVID-19 cases in custody within a San Diego County Jail facility or 20 cases overall in the San Diego County jails.
- I. The term “**Vaccine Literature**” means flyers developed by medical staff from the AMEND unit at the University of California, San Francisco for use in detention settings, but stripped of all advertising and logos of third parties other than the AMEND logo of the University of California, San Francisco.

AGREEMENT

1. Vaccine Literature

Defendant shall distribute Vaccine Literature to all Class Members. Plaintiffs will provide PDF copies of the Vaccine Literature in English and Spanish to Defendant, who may then make copies as necessary. Should Plaintiff become aware of any updates to the Vaccine Literature, Plaintiffs will provide a PDF copy of the updated Vaccine Literature, which Defendant will use thereafter to fulfill the requirement of this provision.

- a. Defendant may distribute the Vaccine Literature as flyers. The flyers must be available in English and Spanish and provided to everyone who is newly booked into any of the San Diego County jail facilities at the time of their booking and upon request by any Class Member, and Defendant will offer flyers to every Class Member incarcerated in the jails at the time of settlement.
- b. Alternatively, Defendant may post the Vaccine Literature as posters, in which case Defendant must post them in English and Spanish in a location in every housing module of each of the San Diego County Jail facilities, whether in the dayroom or sleeping area, that is readily accessible to everyone housed in that housing module.

- c. The parties shall meet and confer if Defendant believes there is good cause to discontinue distribution or if Defendant believes an update to Vaccine Literature should not be distributed, and if an agreement cannot be reached, then Defendant may move the Court to be relieved of this provision in whole or in part for good cause. Additionally, Defendant may cease distribution of Vaccine Literature in the event vaccines are no longer recommended as part of CDC guidance for correctional facilities.

2. **High-Quality Masks**

Subject to the limitations set forth below in this provision, Defendant shall make well-fitting High-Quality Masks available to any Class Members who request them based on their personal preference. Notwithstanding the foregoing, nothing herein shall require the SDSO to provide to an individual Class Member more than five High-Quality Masks per week.

In addition to masks provided on request, Defendant will offer Class Members a High-Quality Mask at the time they first enter any San Diego County Jail facility for intake, as well as on a weekly basis.

- a. This provision shall remain in effect only so long as the CDC continues to recommend such masks for incarcerated persons. This provision shall in no event be construed as imposing more stringent requirements for masks than CDC recommendations.
- b. This provision will only apply when COVID-19 Community Transmission Levels are identified as “high” according to the CDC, or when there is Transmission Within the San Diego County Jails. Defendant will provide High-Quality Masks to Class Members in High-Risk Housing upon request, regardless of the limitations in this sub-paragraph.
- c. Surgical masks will be available upon request to Class Members at any time that High-Quality Masks are not required by this provision. Notwithstanding this provision, nothing herein shall require Defendant to provide to an individual Class Member more than five masks per week.

3. **Soap and Cleaning Supplies**

Defendant shall use best efforts to ensure that all Class Members have access to soap and cleaning supplies, except to the extent security concerns reasonably necessitate otherwise for specific Class Members.

- a. Defendant’s staff will advise Class Members of the policy described in this provision during their Classification Interview

- b. The policy described in this provision will be placed into Defendant's written training protocols for conducting Classification Interviews or incorporated into videos that play at intake or during day room time.

4. **Notice of Test Results**

Defendant shall provide Class Members with oral notification of their test results within 24 hours after Defendant receives the test results from the laboratory. Defendant shall advise all Class Members receiving a COVID test that they are entitled to a written copy of their test result, which Defendant shall provide upon request within 24 hours after receiving the test results from the laboratory or within 24 hours of the request, whichever is later.

- a. Defendant's staff will advise Class Members of the policy described in this provision during their Classification Interview.
- b. The policy described in this provision will be placed into Defendant's written training protocols for the conduct of the Classification Interviews or incorporated into videos that play at intake or during dayroom time.

5. **Notice of Policy re Breaking Quarantine**

Defendant's staff will advise Class Members either during classification interviews or in videos that play at intake or during dayroom time that it is Defendant's policy to only break quarantines when no reasonable alternative exists for the housing of the Class Member being placed into the quarantined module, or when there is a medical, legal, or security need.

- a. The policy described in this provision will be placed into written training protocols for the conduct of the Classification Interviews or incorporated into videos that play at intake or during dayroom time.

6. **COVID Tests for Class Members**

Defendant shall offer polymerase chain reaction ("PCR") tests or rapid COVID-19 tests to individuals being transported to or from medical appointments, and to or from prisons outside of the San Diego County Jail system for as long as CDCR requires such testing.

Defendant shall continue to offer PCR or rapid COVID-19 tests to all Class Members who request them. This paragraph shall not require more than one COVID-19 test based solely on Class Member request per week (e.g., without symptoms or exposure), nor does it prevent Defendant from providing more COVID-19 tests if otherwise appropriate.

Defendant shall continue to offer PCR or rapid COVID-19 tests to all Class Members who exhibit COVID-19 symptoms or who are known to have had close contact for fifteen minutes or more with an individual who has tested positive for COVID-19.

7. **High-Risk Housing**

Defendant will make all deliberate efforts to verify whether Class Members are High-Risk as quickly as possible and to identify High-Risk Class Members who are newly booked into the jails.

Defendant's written policy will ensure that once Defendant verifies that a Class Member is High-Risk, that individual will be sent directly to High-Risk Housing. If the Class Member is in general population when such verification is made, the Class Member will be immediately removed from general population and, after any appropriate period of quarantine, placed in High-Risk Housing.

8. **Settlement Duration**

The settlement will expire in twelve months, or at such time that the CDC determines there is no longer any need for correctional facilities to take extra precautions to mitigate against the risk of COVID-19 transmission, whichever is sooner.

9. **Dismissal and Jurisdiction**

The parties will follow the settlement process dictated by California Rule of Court 3.769. The procedure under Rule 3.769 requires that: (1) one or both parties must file a motion for preliminary approval, which must include a notice plan to the class, (2) if the court grants preliminary approval, a final approval hearing will be set and notice of the settlement, the date of the hearing, and instructions for class members to file objections and be heard at the final approval hearing will be provided to class members. If the Court finally approves the settlement, the Court must enter judgment that "must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment." After the expiration of the settlement period, then the case would be dismissed with prejudice.

The parties shall jointly make reasonable and good faith efforts to secure the Court's approval of this Agreement.

If the Court preliminarily approves this Agreement, the parties agree to stay all proceedings and deadlines in this matter until the Court renders a final decision on approval of this Agreement.

Nothing in this Agreement shall have any preclusive effect on any damages claim by any Class Member or former Class Member, as this case never contained a damages claim. Notwithstanding the foregoing, this Settlement Agreement shall not operate as an admission of liability on the party of any person or entity.

10. Class Notice

If the Court preliminarily approves this Agreement and sets a date for a final approval hearing, the parties will thereafter cooperate in implementing a notice plan reasonably designed to ensure that Class Members receive notice of this Agreement with an opportunity to be heard at the final approval hearing. This notice plan will include, at minimum:

- Posting by Defendant of signage, agreed upon by both parties, in intake rooms and near telephones in the common areas of all housing units in the San Diego Jails, for the period between and preliminary approval of this Agreement and the final approval hearing. Such signage shall be in English and Spanish, shall contain plain language informing Class Members of the terms of this Agreement mutually agreed upon by the Parties, shall provide a phone number that Class Members can call to reach Plaintiffs' counsel free of charge to discuss this Agreement, and shall contain the date of the final approval hearing as well as detailed instructions for how a Class Member can file objections to the Agreement with the Court from within the San Diego County Jail system.

Copies of the Agreement will be available for review at the guard desk in each housing unit. The signage shall contain instructions by which Class Members can promptly obtain a copy of the Agreement at no expense by calling Plaintiffs' counsel to mail them a copy.

- An announcement made by Defendant to each housing unit in the San Diego Jails that the signage mentioned herein has been posted. Such announcement shall be made at or near the time the signage is posted.

Nothing in this paragraph or this Agreement shall prevent Plaintiffs' counsel from further disseminating notice of this Agreement through other methods reasonably calculated to ensure Class Members receive adequate notice.

Prior to any final approval hearing regarding this Agreement, Defendant shall provide a declaration to the Court confirming the signage and announcements referenced in this provision have been carried out, and Plaintiffs' counsel shall provide a declaration to the Court detailing any additional efforts they have undertaken to ensure Class Members are aware of this Agreement and any formal objections made by Class Members to them that the objecting Class Member did not directly file with the Court.

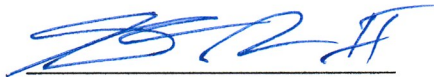
Any objections filed by Class Members must contain the name and booking number of the objecting Class Member, as well as a clear statement of each objection and any legal or factual support for the objection(s) made. An objecting Class Member may request to be heard at the final approval hearing. Objections shall be deemed delivered on the date the Class Member delivers the objection to the member of Defendant's staff to be placed in the mail.

11. Attorneys' Fees and Costs

In seeking approval of this agreement, Plaintiffs will file a motion seeking payment of attorneys' fees and costs of \$250,000, and Defendant will not oppose the motion. The parties agree that such payment is fair and reasonable.

Upon resolution of Plaintiffs' fee motion and final approval by the Court of this Agreement, Defendant agrees to pay to Plaintiffs the amount of \$250,000 in attorneys' fees and costs in full settlement of attorneys' fees and costs for this action and all obligations and disputes arising from it, or an amount otherwise ordered by the Court, if the Court determines in adjudicating Plaintiffs' fee motion that \$250,000 is not fair and reasonable. Defendant reserves the right to seek to withdraw from this Agreement if the Court orders an amount in excess of \$250,000.

FOR DEFENDANT:



Steven P. Inman, II
Senior Deputy
Office of County Counsel,
County of San Diego

Date: 3/24/23

FOR PLAINTIFFS:

Terry Leroy Jones

Date: _____

Gabriel Campos

Gabriel Campos

03/10/2023
Date: _____

Jonathan Markovitz

Jonathan Markovitz
Senior Staff Attorney
ACLU Foundation of San Diego
& Imperial Counties

Counsel for Plaintiffs

Date: 3/10/2023

Signature: 
Gabriel Campos (Mar 10, 2023 11:45 PST)
Email: gaabe.campp@icloud.com

Signature: 
Email: jmarkovitz@aclu-sdic.org

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FOR DEFENDANT:

Steven P. Inman, II
Senior Deputy
Office of County Counsel,
County of San Diego

Date: _____

FOR PLAINTIFFS:



Terry Leroy Jones

Date: 3-20-23

Gabriel Campos

Date: _____

Jonathan Markovitz
Senior Staff Attorney
ACLU Foundation of San Diego
& Imperial Counties

Date: _____

Counsel for Plaintiffs