

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DARYOUSH TAHA,	:	
	:	
Plaintiff,	:	
On Behalf Of Himself	:	
And All those Similarly	:	
Situated	:	CIVIL ACTION NO. 12-6867
v.	:	
	:	CLASS ACTION
BUCKS COUNTY, et al.,	:	
	:	
Defendants.	:	

SETTLEMENT AGREEMENT

Plaintiff Daryoush Taha and the Certified Class (“Plaintiff”), by their undersigned Class Counsel, and Defendants Bucks County and Bucks County Correctional Facility (collectively “Bucks”), by their undersigned counsel, hereby stipulate and agree, subject to the approval of the Court, as follows:

WHEREAS, the above-captioned class action lawsuit (the “Action”) was filed in 2012, and has been extensively litigated, including: the granting of Plaintiff’s partial motion for summary judgment on liability; the granting of Bucks’ motion for partial summary judgment on Taha’s claim for “actual and real damages;” the granting of Plaintiff’s motion for class certification; an interlocutory appeal of the grant of that motion to the United States Court of Appeals for the Third Circuit, *Taha v. Cty. of Bucks*, 862 F.3d 292 (3d Cir. 2017); a jury trial to verdict in May 2019 and subsequent entry of a Final Judgment and an Amended Final Judgment [ECF Nos. 350, 374]; and the adjudication of extensive post-trial motions; and

WHEREAS Bucks has filed an appeal to the Third Circuit from the Amended Final Judgment entered in favor of Plaintiff and the Certified Class [Dkt. No. 375], which appeal is presently pending; and

WHEREAS the parties have subsequently engaged in extensive arms-length settlement negotiations before the Third Circuit Mediator, Joseph Torregrossa; and

WHEREAS, Plaintiff and Class Counsel believe the proposed settlement set forth herein is fair, reasonable, and adequate, and in the best interests of the Class; and

WHEREAS, Bucks, despite its denial of liability for the claims asserted by Plaintiff and the Certified Class, and its belief that it has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the release, order, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Bucks with respect to the Inmate Lookup Tool that is the subject of this Action;

NOW, THEREFORE, in consideration of the covenants, agreements, and release set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice on the following terms and conditions:

A. Definitions

1. “Claim Deadline” means the last date on which claims may be submitted. The Claim Deadline will be ninety (90) days after the date of publication of the Class Notice.
2. “Class Notice” means the Notice to be printed and mailed to all class members for whom the Claims Administrator has an address. The content of that Notice is Exhibit A hereto. “Publication Notice” means the short-form notice to be published in the manner set forth in this Agreement. The content of that Notice is Exhibit B hereto. “Claim Form” is the form and instructions for submitting claims attached as Exhibit C hereto.

3. “Class Members” means those persons who are members of the Class certified by the Court and defined as: “All persons whose criminal history record information was made available on the Bucks County Correctional Facility Inmate Lookup Tool before June 18, 2013.” [ECF 374].

4. “Class Counsel” means the law firms of Kohn, Swift & Graf, P.C.; Shub Law Firm LLC, and Abramson & Denenberg, P.C.

5. “Court” means the United States District Court for the Eastern District of Pennsylvania.

6. “Effective Date” means the tenth (10th) day after the date on which all of the following conditions are satisfied:

- a. Execution of this Agreement;
- b. Entry of the Final Approval Order by the Court approving the Settlement embodied in this Agreement; and
- c. The passage of the earliest date on which: (i) the time for taking an appeal from the Final Approval Order and judgment has expired, without any appeal having been taken; or (ii) if an appeal is taken, the date on which all appeals, including petitions for rehearing and petitions for certiorari, have been finally disposed of in a manner resulting in affirmance of all the material provisions of the Final Approval Order (however, a reversal of the award of attorneys’ fees to Class Counsel does not affect the finality or effectiveness of the other provisions of this Settlement Agreement).

7. “Eligible Class Member” means a Class Member who has submitted a timely and valid claim in accordance with the requirements set forth herein.

8. “Fairness Hearing” or “Final Approval Hearing” means a hearing to be held by the Court, after notice to the Class, to consider approval of the Settlement and Class Counsel’s motion for approval of attorneys’ fees and reimbursement of costs and expenses, and a Service Award to Plaintiff. The Parties will move the Court to schedule a Fairness Hearing at least ninety (90) days from the entry of the Preliminary Approval Order.

9. “Preliminary Approval Order” means the Order preliminarily approving the Settlement, and approving the Class Notice, Publication Notice, and claim procedure set forth herein. A draft of the proposed Preliminary Approval Order is attached as Exhibit D hereto.

10. “Final Approval Order” means the Order granting final approval to the Settlement, which should not be entered sooner than ninety (90) days after the appropriate officials have been served with notice of the Settlement in accordance with the Class Action Fairness Act of 2005, as codified at 28 U.S.C. § 1715(b). Bucks agrees to provide the Court and Class Counsel promptly with the date(s) of service of said notices. A draft of the proposed Final Approval Order is attached as Exhibit E.

11. “Service Award” means the monetary amount awarded by the Court in recognition of the assistance provided by Plaintiff Daryoush Taha in the maintenance of this action.

B. Approval of this Agreement and Dismissal of Claims Against Bucks

12. Plaintiff and Bucks shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court’s approval for the establishment of procedures and deadlines to secure the complete and final dismissal with prejudice of the Action.

13. Plaintiff shall submit to the Court motions: seeking preliminary approval of this Agreement; for authorization to disseminate the Notices and Claim Form in the Form set

forth in Exhibits A-C hereto; if preliminary approval is granted, for Final Approval of this Settlement; and for Court Approval of Class Counsel's fees and cost reimbursements and a Service Award to Plaintiff. Plaintiff shall file the motion for Preliminary Approval within twenty (20) days of the execution of this Agreement.

14. Bucks shall have the right to review and comment on the Plaintiff's motions for preliminary and final approval, and Class Counsel shall provide Bucks with copies of the draft motions at least five (5) business days prior to the filing of such motions. Class Counsel shall consider any such comments in good faith, and shall not unreasonably reject such comments.

15. In moving for Final Approval, Plaintiff shall seek the entry of an order and final judgment dismissing this action with prejudice, in the form attached as Exhibit E hereto.

- a. At the Final Approval Hearing, Plaintiff will request entry of an order granting final approval of this Agreement, in the form of the attached [Proposed] Final Approval Order and Final Judgment;
- b. finally approving the Settlement as fair, reasonable, and adequate, within the meaning of Rule 23(e) of the Federal Rules of Civil Procedure, and directing its consummation pursuant to its terms;
- c. directing that the Action be dismissed with prejudice, and releasing the Released Claims; and
- d. containing such other and further provisions consistent with the terms of the Settlement to which the Parties expressly consent in writing.

C. Release and Covenant Not to Sue

16. For and in consideration of the settlement payments described in this Settlement Agreement and the mutual promises contained herein, Plaintiff and Class Members, on behalf of themselves and their respective agents, heirs, executors, administrators, successors, assigns, guardians, and representatives (“Releasers”), fully and finally release and discharge, as of the Effective Date, Bucks and its present and former officers, employees, and agents (“Released Parties”) from all claims, demands, judgments, actions, suits and/or causes of action, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, arising in any way from or in any way related to the facts, activities, or circumstances alleged in the Action or which are based on or in any way related to the dissemination of information relating to Releasers on Bucks’ Inmate Lookup Tool (the “Release” or “Released Claims”). Releasers further hereby covenant and agree that they shall not, hereafter, assert a claim or otherwise seek to establish liability against the Released Parties based in whole or in part on any Released Claims. Releasers are aware that they may hereafter discover claims that existed during the Class Period that are now unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the allegations and subject matter of the Action. Nevertheless, Releasers intend to fully, finally, and forever settle and release all such matters and claims against the Released Parties, which exist or might have existed (whether or not previously or currently asserted in the Action).

D. **Settlement Amounts**

17. The maximum amount to be paid by Bucks for payments to Eligible Class Members, the costs of notice and claims administration, programmatic relief as set forth below in paragraph 21, and a Service Award to Plaintiff is \$10 million. The minimum amount to be paid by Bucks for payments to Eligible Class Members, the costs of notice and claims administration,

programmatic relief as set forth below in paragraph 21, and a Service Award to Plaintiff is \$3.5 million.

18. A settlement fund will not be created; instead, settlement payments will be distributed by the Claims Administrator to Eligible Class Members. Distributions will be made within 30 (thirty) days after the Effective Date.

19. Eligible Class Members will each receive \$600. However, if the payment of \$600 to Eligible Class Members plus the payment of notice and claims administration expenses, the cost of programmatic relief, and a Service Award to Plaintiff would exceed \$10 million, the amount paid to each Eligible Class Member will be reduced on a pro-rata basis in order to limit the total expenditure by Bucks to \$10 million.

20. If the total payments to Eligible Class Members, plus the payment of notice and claims administration expenses and a Service Award to Plaintiff, is less than the \$3.5 million floor, the amount to be paid to each Eligible Class Member will be adjusted upward on a pro-rata basis to reach the \$3.5 million floor. However, in no event shall Eligible Class Members receive more than \$1,000 apiece.

21. If, notwithstanding the pro-rata adjustment set forth above in paragraph 20, the \$3.5 million floor is still not reached, Bucks will spend the difference, in order to reach the \$3.5 million floor, on funding programs (including, but not limited to, creating new positions, hiring new staff, or funding new initiatives) devoted to obtaining expungements and/or addiction treatment services for clients of the Bucks County Public Defender (“programmatic relief”). Such programmatic relief shall be in addition to expenditures that were previously authorized in Bucks County’s 2020 budget.

22. If the total payments to Eligible Class Members plus the payment of notice and claims administration expenses and a Service Award to Plaintiff is more than \$3.5 million but less than \$10 million, Bucks will spend 5% of the difference between that total and \$10 million for the programmatic relief described above in paragraph 21.

23. Class Counsel will file a petition for attorneys' fees and expenses seeking an amount not to exceed \$4,000,000 and a request seeking a Service Award for Plaintiff in an amount not to exceed \$30,000, and agree not to accept payments greater than those amounts. The foregoing sum for attorneys' fees and expenses encompasses the fees and expenses of all lawyers and law firms that have worked on behalf of Plaintiff and the class in this matter. Bucks agrees not to object to these amounts, which are subject to Court approval. The \$4,000,000 for attorney's fees is in addition to the amounts set forth above for payment of claims, payment of notice and claims administration expenses, funding of programmatic relief, and the Service Award to Plaintiff. In the event the Court approves lesser amounts for attorneys' fees and expenses and/or a Service Award than those set forth in this paragraph, the Settlement Agreement will remain binding on the parties. However, Class Counsel and Plaintiff reserve the right to appeal from any reduction of their requested attorneys' fees or Service Award, without affecting the finality of this Agreement. Bucks agrees to pay the Court-approved amounts within ten business days of the Effective Date. Kohn Swift & Graf agrees to indemnify Bucks against any claims asserted against it by any other lawyers and law firms who worked on behalf of Plaintiff and/or the class in this matter.

E. Additional Provisions

24. Bucks and Class Counsel shall work cooperatively to select the Claims Administrator, which selection will be based on a competitive bidding process. All bids will be

shared with Class Counsel. However, Bucks will retain the discretion to make the final choice of the administrator.

25. The Claims Administrator will be responsible for all aspects of claims administration, including without limitation: (a) creating and maintaining a database of names and addresses of class members; (b) comparing that database with a national change of address database; (c) printing and mailing notices, each with an assigned unique personal identification number (“PIN”); (d) compiling new address information and re-sending any notices returned as undeliverable and, if appropriate, skip tracing those that are returned as undeliverable and do not contain a forwarding address; (e) maintaining the previously-established website for the purposes of notice and claim administration, including the creation of forms and IVR procedures that will provide for electronic submission of claim forms, and the maintenance of a toll-free telephone number dedicated to the Settlement; (f) providing a blank Claim Form by mail or email to any Class Members who request one; and (g) compiling a list of Class Members who submit properly completed Claim Forms, either by mail or via the website, and verifying the accuracy and completeness of the Claim Forms. Settlement checks will be mailed to Eligible Class Members or electronically deposited into Eligible Class Members’ bank accounts by the Claims Administrator.

26. Notice of the settlement will be provided in the same manner as the dissemination of notice of the class certification decision in this case – namely, mailed Notice to class members’ last known addresses; Publication Notice in the Bucks County Courier Times and Doylestown Intelligencer; and the continued maintenance of the previously established website, www.CHRIALitigation.com. The Publication Notice will be the same size and frequency as the prior Publication Notice of the class certification decision in this case. Notice

will also be sent electronically to Class Members whose email addresses are known. If, thirty (30) days before the claims deadline, the \$3.5 million floor for class member payments and notice and claims administration expenses is not projected to be reached even if Eligible Class Members are paid \$1,000 each, a reminder postcard notice in the form attached as Exhibit F shall be mailed to class members except for those who have already submitted claims or those whose prior notice was returned as undeliverable.

27. If Class Counsel determines to engage in additional efforts to notify and identify Class Members, such as through social media, any expenses will be borne by Class Counsel. The Court must approve any such additional notice efforts. Bucks reserves the right to oppose the content of Class Counsel's proposed social media postings.

28. Claims may be submitted by mail or by using a claim form on the settlement website, in the form attached as Exhibit C. All claims submitted by class members who receive the mailed Notice will require the provision of the Class Member's name, current address, PIN, and last four digits of the Class Member's Social Security number. Class members who have not been assigned a PIN may submit a claim, which must include their name, current address, and last four digits of their Social Security number. If a claim is submitted by someone without an assigned PIN and whose Social Security number is not found in Bucks' records, Bucks will require verification of the claimant's identity through photographic or documentary corroboration, or the provision by the claimant of his/her full Social Security number. Class members will be given the right, prior to the claim form deadline, to correct any submitted information should the Claims Administrator determine that such a correction is necessary. Any disputes regarding the validity of a claim shall be resolved by the Magistrate.

29. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, or the application of Class Counsel for an award of attorneys' fees, costs, and expenses and/or for a Service Award for Plaintiff, must timely do so in the manner specified in the Preliminary Approval Order and in any subsequent notice or order concerning the application for attorneys' fees, costs and expenses and/or for a Service Award to Plaintiff.

30. This Agreement shall terminate automatically if the Court fails to approve any term of the Agreement other than reducing the amounts set forth above for attorneys' fees and expenses and the Service Award to Plaintiff, or if the Agreement is set aside on appeal, or if, prior to approval of this Agreement by the Court, the Parties mutually agree to termination by and through their respective counsel. If this Agreement is terminated, each Party shall return to his or its respective status as of date of Preliminary Approval, and they shall proceed in all respects as if this Agreement had not been executed and any related orders had not been entered, preserving all of their respective claims and defenses and appellate rights.

31. Neither this Agreement nor any document prepared in connection with the Settlement may be admitted in any proceeding as an admission by Bucks or Plaintiff, except any and all provisions of the Agreement may be admitted in evidence and otherwise used in a proceeding to enforce any or all terms of the Agreement, or in defense of any claims released or barred by this Agreement. The parties specifically agree that Bucks' execution of this Agreement is not, and will not be construed as, an admission by it or deemed to be evidence: (1) of the validity of any of the claims made by Plaintiff or of any liability to Plaintiff or Class Members; or (2) that Bucks violated CHRIA or any other Pennsylvania law in any respect.

32. The parties and their counsel agree that, in responding to any inquiries from the public media concerning the Action or the Settlement, they will limit their comments to the provision of factual information as is contained in the Notices, this Agreement, the pleadings, and any of the court orders in the Action, and may further state only to the effect that “the matter has been settled to the satisfaction of all Parties subject to Court approval.” Nothing in this paragraph will limit Class Counsel’s ability to communicate privately with a Class Member concerning the Action or Settlement. Bucks may make such public or regulatory disclosures about the Action and Settlement as any applicable laws require.

33. After this Agreement is fully executed by the parties and their attorneys of record, this Agreement and its attached Exhibits will constitute the entire agreement relating to settlement of the Action, and it will then be deemed that no oral representations, warranties, or inducements have been made to any party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants expressly stated in this Agreement and its Exhibits.

34. Class Counsel unconditionally warrant and represent that they are authorized by Plaintiff, for whom they are attorneys of record, and the attorneys of record for Bucks warrant and represent that they are authorized by Bucks, to enter into this Agreement on behalf of their respective clients and to take all appropriate action required or permitted to be taken by such parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement. The parties and their counsel must cooperate with each other and use their best efforts to effectuate the implementation of the Settlement.

35. No opinion concerning the tax consequences of the Settlement to individual Class Members is being given or will be given by the parties or their counsel, nor is any representation or warranty in this regard made by virtue of this Agreement. Plaintiff and Class Members must consult their own tax advisors regarding the tax consequences of the Settlement, including any payments provided hereunder and any tax reporting obligations they may have with respect to those payments. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

36. This Agreement, and any and all parts of it, can be amended, modified, changed or waived only by an express written instrument signed by counsel for all parties.

37. Plaintiff hereby warrants and represents that he has not previously assigned or sold his claim against Bucks to anyone or any entity.

38. All terms of this Agreement and its exhibits will be governed by and interpreted according to the laws of the Commonwealth of Pennsylvania, without giving effect to any conflict of law principles or choice of law principles.

39. The parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any party on the basis that the party was the drafter or participated in the drafting.

40. This Agreement may be executed in one or more counterparts and may be executed with an electronic signature. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the parties to this

Agreement will exchange among themselves original signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the date and year first above written.

Dated: June 1, 2020

/s/ Burt M. Rublin

Burt M. Rublin
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
(215) 864-8116 phone
(215) 864-9783 fax

/s/ Joseph C. Kohn

Joseph C. Kohn
Robert J. LaRocca
KOHN, SWIFT & GRAF, P.C.
1600 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 238-1700 phone
(213) 238-1968 fax

/s/ Mark A. Aronchick

Mark A. Aronchick
**HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER**
One Logan Square, 27th Floor
Philadelphia, PA 19103-6933
(215) 568-6200 phone
(215) 568-0300 fax

/s/ Jonathan Shub

Jonathan Shub
SHUB LAW FIRM LLC
134 Kings Hwy. E.
2nd Floor
Haddonfield, NJ 08033
(856) 772-7200 phone

*Attorney for Defendants The County of Bucks
and The Bucks County Correctional Facility*

/s/ Alan Denenberg

Alan Denenberg
ABRAMSON & DENENBERG, P.C.
1315 Walnut Street, Suite 500
Philadelphia, PA 19103
(215) 398-7066 phone
(213) 546-5355 fax

Attorneys for Plaintiff and the Class