

<p style="text-align: right;">Page 1</p> <p>UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK</p> <p>-----X</p> <p>JEAN AZOR-EL, et al.,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p style="padding-left: 40px;">-against-</p> <p style="padding-left: 40px;">Index No: 1:20-cv-03650-KPF</p> <p>CITY OF NEW YORK, et al.,</p> <p style="padding-left: 40px;">Defendants.</p> <p>-----X</p> <p style="padding-left: 40px;">DATE: April 23, 2021</p> <p style="padding-left: 40px;">TIME: 4:14 p.m.</p> <p style="padding-left: 40px;">EXAMINATION BEFORE TRIAL of the Plaintiff, MAURICE BARNAR, taken by the Plaintiff, via videoconference, pursuant to Court Order, held on the above mentioned date and time, before a Notary Public of the State of New York.</p>	<p style="text-align: right;">Page 3</p> <p>1 FEDERAL STIPULATIONS</p> <p>2 IT IS HEREBY STIPULATED AND AGREED</p> <p>3 by and between (among) counsel for the respective</p> <p>4 parties herein, that filing and sealing be and the</p> <p>5 same are hereby waived.</p> <p>6</p> <p>7 IT IS FURTHER STIPULATED AND AGREED</p> <p>8 that all objections, except as to the form of the question,</p> <p>9 shall be reserved to the time of the trial.</p> <p>10</p> <p>11 IT IS FURTHER STIPULATED AND AGREED</p> <p>12 that the within deposition may be sworn to and signed</p> <p>13 before any officer authorized to administer an</p> <p>14 oath, with the same force and effect as if signed</p> <p>15 and sworn to before the Court.</p> <p>16</p> <p>17 VIDEO STIPULATIONS</p> <p>18 IT IS HEREBY STIPULATED AND AGREED by</p> <p>19 and between counsel for all parties present</p> <p>20 that pursuant to CPLR section 3113(d) this</p> <p>21 deposition is to be conducted by video</p> <p>22 conference, that the court reporter, all</p> <p>23 counsel, and the witness are all in separate</p> <p>24 remote locations and participating via</p> <p>25 videoconference (LegalView/Zoom) meeting</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 KEENAN & BHATIA, LLC</p> <p>4 Attorneys for Plaintiffs</p> <p>5 90 Broad Street, Suite 200</p> <p>6 New York, New York 10004</p> <p>7</p> <p>8 BY: E.E. KEENAN, ESQ.</p> <p>9</p> <p>10 CITY OF NEW YORK</p> <p>11 Attorneys for Defendants</p> <p>12 100 Church Street</p> <p>13 New York, New York</p> <p>14 BY: DAVID THAYER, ESQ.</p> <p>15</p> <p>16 ALSO PRESENT:</p> <p>17 Sonal Bhatia, Esq.,</p> <p>18 Keenan & Bhatia</p> <p>19 Julia Gokhberg, Litigation Manager</p> <p>20 Keenan & Bhatia</p> <p>21</p> <p>22 Chlarens Orsland, Esq.</p> <p>23 City of New York</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 under the control of Lexitas Court Reporting</p> <p>2 Service, that the officer administering the</p> <p>3 oath to the witness need not be in the place</p> <p>4 of the deposition and the witness shall be</p> <p>5 sworn in remotely by the court reporter after</p> <p>6 confirming the witnesses identity, that this</p> <p>7 videoconference will not be recorded in any</p> <p>8 manner and that any recording without the</p> <p>9 express written consent of all parties shall</p> <p>10 be considered unauthorized, in violation of</p> <p>11 law, and shall not be used for any purpose in</p> <p>12 this litigation or otherwise.</p> <p>13 IT IS FURTHER STIPULATED that exhibits</p> <p>14 may be marked by the attorney presenting the</p> <p>15 exhibit to the witness, and that a copy of</p> <p>16 any exhibit presented to a witness shall be</p> <p>17 e-mailed to or otherwise in possession of all</p> <p>18 counsel prior to any questioning of a witness</p> <p>19 regarding the exhibit in question. All</p> <p>20 parties shall bear their own costs in the</p> <p>21 conduct of this deposition by video</p> <p>22 conference, notwithstanding the obligation</p> <p>23 by CPLR to supply a copy of the transcript to</p> <p>24 the deposed party by the taking party in</p> <p>25 civil litigation matters.</p>

<p style="text-align: right;">Page 5</p> <p>1 MAURICE BARNAR, 2 the witness herein, having been first duly 3 sworn by a Notary Public of the State of New 4 York, was examined and testified as follows: 5 THE REPORTER: State your name 6 for the record, please. 7 THE WITNESS: Maurice Barnar. 8 THE REPORTER: State your 9 address for the record, please. 10 THE WITNESS: NIC 1500, East 11 Elmhurst, New York. 12 EXAMINATION BY 13 MR. KEENAN: 14 Q. Mr. Barnar, of course, we know each 15 other pretty well by now but, again, for the 16 record, I'm E.E. Keenan. I'm one of your 17 attorneys in this case. 18 Do you understand that you're here 19 today to give a deposition in an action that 20 you and several other people have filed 21 concerning conditions of confinement during 22 COVID19, correct? 23 A. Yes. 24 Q. Just a little bit of background. 25 We're taking a deposition today. You</p>	<p style="text-align: right;">Page 7</p> <p>1 M. BARNAR 2 Thayer is going to have the opportunity to 3 ask questions as well. 4 A. Sure. Could you hear me well? 5 Q. I can hear you crystal clear. 6 A. Okay, fine. 7 Q. So Mr. Barnar, how long have you 8 been confined in NIC? 9 A. Two years-plus. April 2nd was two 10 years. 11 Q. So you were in NIC at the time that 12 the COVID19 pandemic started, correct? 13 A. Correct. 14 Q. You have been in NIC for the 15 duration of the pandemic, correct? 16 A. Correct. 17 Q. I want to first ask you about mask 18 wearing by correction officers and other 19 correctional staff. Can you summarize what 20 the current state of affairs is in terms of 21 correction officers and other correctional 22 staff wearing or not wearing masks? 23 A. Okay, the current status is I've 24 heard in a roundabout way that they are 25 pretty much mandated to wear them. They're</p>
<p style="text-align: right;">Page 6</p> <p>1 M. BARNAR 2 understand a deposition is testimony with the 3 same force and effect as if you were 4 testifying in open court, right? 5 A. Yes. 6 Q. We're doing this deposition by 7 Microsoft Teams or Skype, but there's 8 sometimes a delay or a lag we've noticed. If 9 anything that anybody says in this deposition 10 is unclear, will you just ask us to clarify 11 it? 12 A. Okay, fine. Sure. 13 Q. Are you feeling able to give a 14 deposition today? 15 A. Yes, I am. Yes. 16 Q. So I'm going to focus on -- you 17 might testify again in this case, you 18 probably will, but today's deposition is just 19 going to focus mostly on two issues which are 20 going to be mask wearing and sanitation, 21 especially of high-touch surfaces. The Court 22 has asked us to look into that for an 23 expedited discovery period. So I'm going to 24 be focused on those issues, and after I ask 25 questions, the attorney for the City, Mr.</p>	<p style="text-align: right;">Page 8</p> <p>1 M. BARNAR 2 still wearing them maybe 60, 70 percent of 3 the time. Some are wearing them properly, 4 some are not wearing them a little complacent 5 and comfortable, but they are wearing them 6 much more than they were when I initially 7 filed the -- or when we initially filed the 8 suit so, but now I think I heard in a 9 roundabout way that they are mandated to wear 10 them. 11 Q. When did you observe that change? 12 When did you see that coming into effect? 13 A. As far as like me hearing about the 14 mandate to wear them or -- 15 Q. Sure, yeah. Let me ask you that? 16 A. Well, that was maybe like a week or 17 two ago. 18 Q. So up until a week or two ago, what 19 was, in percentage terms before a week or two 20 ago when you heard that this mandate had been 21 put in place, so before that point what was 22 the state of affairs, what did you observe in 23 terms of the percentages of officers who were 24 wearing masks properly and the percentage who 25 weren't?</p>

<p style="text-align: right;">Page 9</p> <p>1 M. BARNAR</p> <p>2 A. Maybe a lot less, like 40, 60.</p> <p>3 Maybe 40 percent wearing, 60 percent not,</p> <p>4 whatever.</p> <p>5 Q. So up until about a week or two ago,</p> <p>6 your observation was only about 40 percent of</p> <p>7 correction officers were wearing a mask?</p> <p>8 A. Correct.</p> <p>9 Q. Now, just within the past week or</p> <p>10 two, you think it's at 60 or 70 percent</p> <p>11 roughly?</p> <p>12 A. Correct.</p> <p>13 Q. Now, that 60 or 70 percent, is that</p> <p>14 people wearing a mask all the way over both</p> <p>15 their face and their nose?</p> <p>16 A. Yes.</p> <p>17 Q. And so the other 30 or 40 percent,</p> <p>18 that's people who are either not wearing a</p> <p>19 mask properly or not wearing it at all,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. So in terms of officers and other</p> <p>23 correctional staff who are not wearing a mask</p> <p>24 properly, do you observe them not wearing a</p> <p>25 mask properly when they are within closer</p>	<p style="text-align: right;">Page 11</p> <p>1 M. BARNAR</p> <p>2 to pretty much protect myself. I have my</p> <p>3 mask on 90 to 100 percent of the time because</p> <p>4 I've contracted COVID already so I'm pretty</p> <p>5 much aware of trying to be proactive myself.</p> <p>6 Q. I just want to clarify your</p> <p>7 testimony there. Would you feel more</p> <p>8 comfortable if they were wearing a mask</p> <p>9 properly when interacting with you?</p> <p>10 A. Absolutely, and I have no problem</p> <p>11 asking them to put your mask on.</p> <p>12 Q. But it does make you uncomfortable</p> <p>13 when they do not wear a mask properly?</p> <p>14 A. Sure, yes.</p> <p>15 Q. I know you're in NIC, and by the</p> <p>16 way, you previously gave a declaration as</p> <p>17 part of this case under oath, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Was everything in that declaration</p> <p>20 true and correct?</p> <p>21 A. Yes, it was.</p> <p>22 Q. I know you deal with some ongoing</p> <p>23 medical conditions. Can you summarize what</p> <p>24 those are?</p> <p>25 A. I'm in NIC basically because I have</p>
<p style="text-align: right;">Page 10</p> <p>1 M. BARNAR</p> <p>2 than six feet of detainees?</p> <p>3 A. Yes, definitely, yes.</p> <p>4 Q. Have you observed, even in the past</p> <p>5 week or two, have you observed correction</p> <p>6 officers and staff not wearing a mask or not</p> <p>7 wearing a mask properly when they have been</p> <p>8 in the dayroom and NIC?</p> <p>9 A. Yes, just about everywhere.</p> <p>10 Q. You mentioned everywhere, would that</p> <p>11 include the dormitory that you're housed in?</p> <p>12 A. Correct.</p> <p>13 Q. Your housed in a dormitory setting,</p> <p>14 not in a cell, correct?</p> <p>15 A. Correct, I'm in Dorm 3.</p> <p>16 Q. Dorm 3, okay. Have officers</p> <p>17 interacted with you recently who were not</p> <p>18 wearing their mask properly or not wearing a</p> <p>19 mask at all?</p> <p>20 A. Yes.</p> <p>21 Q. Have you felt comfortable</p> <p>22 confronting them about that or asking them to</p> <p>23 wear a mask?</p> <p>24 A. Have I felt uncomfortable, no. I'm</p> <p>25 pretty much straight upfront with it. I have</p>	<p style="text-align: right;">Page 12</p> <p>1 M. BARNAR</p> <p>2 sleep apnea and I use a CPAP machine.</p> <p>3 Q. Do you feel vulnerable to COVID19 if</p> <p>4 you were to catch it or catch a new variant?</p> <p>5 A. Being that I'm sleeping with a CPAP,</p> <p>6 a sleeping apparatus, I mean, yeah, if it was</p> <p>7 within the area, I mean, I would be very</p> <p>8 vulnerable, I mean, if it was to get into my</p> <p>9 machine or whatever.</p> <p>10 Q. Are you comfortable naming any of</p> <p>11 the officers you have seen not wearing masks</p> <p>12 or not wearing masks properly, say, in the</p> <p>13 last month or do you not feel comfortable</p> <p>14 naming them?</p> <p>15 A. Do I have any on the top of my head,</p> <p>16 no, but I mean, if I would have been thinking</p> <p>17 about it, I could have written it down, and I</p> <p>18 would be comfortable naming some names, but I</p> <p>19 don't have right now, to be honest.</p> <p>20 Q. Let me ask you about high-touch</p> <p>21 surfaces.</p> <p>22 A. Yes.</p> <p>23 Q. Just generally are you aware of any</p> <p>24 sanitizing material being available to you to</p> <p>25 clean high-touch surfaces?</p>

<p style="text-align: right;">Page 13</p> <p>1 M. BARNAR</p> <p>2 A. There is a dispensary within the</p> <p>3 slop sink that has cleaning solution. Now,</p> <p>4 what is supposed to be provided, as far as</p> <p>5 like the phone is one of my main things. I</p> <p>6 would have to get some type of is sponge or</p> <p>7 something or soap on a paper towel to clean</p> <p>8 the phones after each usage, but I get maybe</p> <p>9 like alcohol pads from medical for some other</p> <p>10 reason to clean the phone. Basically this is</p> <p>11 what I'm doing. Yeah, that's the situation.</p> <p>12 Q. I'm sorry --</p> <p>13 A. Go ahead.</p> <p>14 Q. Go ahead, Mr. Barnar.</p> <p>15 A. They were supposed to be providing</p> <p>16 some type of cleaning solution or wipes or</p> <p>17 something to clean the phone after each use</p> <p>18 and that's just the phone. Other high-touch</p> <p>19 areas, they're supposed to have a special</p> <p>20 sanitation or some type of housekeeping that</p> <p>21 would come and clean those areas, which they</p> <p>22 don't do.</p> <p>23 Q. You said that they're supposed to be</p> <p>24 some type of housekeeping or a crew to clean</p> <p>25 those areas but they're not doing it,</p>	<p style="text-align: right;">Page 15</p> <p>1 M. BARNAR</p> <p>2 alcohol wipes or alcohol pads from the</p> <p>3 medical staff, right?</p> <p>4 A. Correct.</p> <p>5 Q. So basically, unless you're able to</p> <p>6 get a medical staff person to give you some</p> <p>7 extras that they have or something, there</p> <p>8 would not be alcohol wipes available to</p> <p>9 detainees generally in order to wipe down the</p> <p>10 phones?</p> <p>11 A. That's correct.</p> <p>12 Q. So in other words, correction staff</p> <p>13 and correction officers do not issue alcohol</p> <p>14 wipes or prep pads in order to sanitize</p> <p>15 high-touch surfaces; is that right?</p> <p>16 A. No, no. There was something</p> <p>17 supposed to be in place for that initially</p> <p>18 but it never really happened.</p> <p>19 Q. Tell us more about that?</p> <p>20 A. Hold on one second.</p> <p>21 Q. Sure.</p> <p>22 A. What was the question again?</p> <p>23 Q. Is everything all right there?</p> <p>24 A. Yeah, everything is fine.</p> <p>25 Q. So I was asking you to tell us a</p>
<p style="text-align: right;">Page 14</p> <p>1 M. BARNAR</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. Was there a point during the</p> <p>5 pandemic where Rikers and DOC was sending</p> <p>6 civilian crews to your dorm to clean</p> <p>7 high-touch surfaces?</p> <p>8 A. Maybe like the first month.</p> <p>9 Q. The first month of the pandemic,</p> <p>10 say, March, April 2020?</p> <p>11 A. Maybe March in '20.</p> <p>12 Q. Within the past -- let me even ask,</p> <p>13 within this calendar year 2021, have you ever</p> <p>14 seen a cleaning crew or an individual</p> <p>15 cleaning person coming through your dorm or</p> <p>16 the dayroom or any other area you use to</p> <p>17 clean high-touch surfaces?</p> <p>18 A. No. They may clean the bathroom and</p> <p>19 sweep and mop the dorm but actually cleaning</p> <p>20 high-touch areas, no.</p> <p>21 Q. You mentioned that you sometimes use</p> <p>22 alcohol prep pads or alcohol wipes to clean</p> <p>23 the phones, right?</p> <p>24 A. Yes.</p> <p>25 Q. That's only because you get those</p>	<p style="text-align: right;">Page 16</p> <p>1 M. BARNAR</p> <p>2 little more about the fact that initially</p> <p>3 something was supposed to be made available</p> <p>4 to clean phones but it never was?</p> <p>5 A. Okay.</p> <p>6 Q. Tell us more about that?</p> <p>7 A. You want me to elaborate on that?</p> <p>8 Q. Yes.</p> <p>9 A. Initially we were told there would</p> <p>10 be a cleaning solution or either some type of</p> <p>11 sanitation wipes or Clorox wipes or something</p> <p>12 to use on the phone after each usage, right,</p> <p>13 after each inmate or whatever, detainee uses</p> <p>14 the phone, or either some type of solution</p> <p>15 put by the phones that we could use for it.</p> <p>16 That never really happened. We were using</p> <p>17 mildew remover which is in a spray bottle</p> <p>18 because it has like a bleach content in it,</p> <p>19 and that's what we were using for it. That</p> <p>20 was it.</p> <p>21 Q. Go ahead. Mr. Barnar.</p> <p>22 A. So but that kind of like ran its</p> <p>23 course because they were saying we're not</p> <p>24 supposed to have the spray bottles, so they</p> <p>25 would take those away on the search, and as</p>

<p style="text-align: right;">Page 17</p> <p>1 M. BARNAR</p> <p>2 far as like wipes, that never really</p> <p>3 happened. We seen them in the control</p> <p>4 station before but we were never afforded</p> <p>5 those.</p> <p>6 Q. So correction officers themselves</p> <p>7 have had access to wipes to clean high-touch</p> <p>8 surfaces, in your observation?</p> <p>9 A. They probably were cleaning their</p> <p>10 phones inside the control station or</p> <p>11 whatever.</p> <p>12 Q. You saw them have wipes inside the</p> <p>13 control station, right?</p> <p>14 A. Yes.</p> <p>15 Q. But they never issued those wipes to</p> <p>16 you or to any other detainee, right?</p> <p>17 A. Absolutely not, no.</p> <p>18 Q. Do you use any workarounds or</p> <p>19 anything else to try to avoid touching, say,</p> <p>20 phones or other high-touch surfaces when</p> <p>21 you're using them?</p> <p>22 A. Like I said, I use those prep wipes</p> <p>23 that I'm able to maybe finagle or either I</p> <p>24 put soap and water on some paper towels and</p> <p>25 wipe the phone each time I get on because I'm</p>	<p style="text-align: right;">Page 19</p> <p>1 M. BARNAR</p> <p>2 Q. You mentioned that there is a sink</p> <p>3 that has some type of sanitizing solution is</p> <p>4 that right?</p> <p>5 A. Oh, they call it a slop sink. It's</p> <p>6 in a little closet. We call it the slop sink</p> <p>7 so -- right, and it's a dispenser with maybe</p> <p>8 three or four different solutions to clean.</p> <p>9 It comes out of a tube, but you have to put</p> <p>10 it in something. So the problem is what are</p> <p>11 we putting it in and what are we using to</p> <p>12 clean? So we use a sponge which is going to</p> <p>13 be hard to use a sponge to clean the phone or</p> <p>14 you put it on a paper towel. The solution is</p> <p>15 not for your hands, so you would need gloves</p> <p>16 on to be dealing with the solution. Yeah.</p> <p>17 So the easier way would be just a wipe, an</p> <p>18 alcohol wipe or a pad or whatever to just</p> <p>19 clean the phone.</p> <p>20 Q. The liquid solution that is</p> <p>21 contained near the slop sink?</p> <p>22 A. Yes.</p> <p>23 Q. It's caustic to your hands, it can</p> <p>24 cause irritation or damage to your hands if</p> <p>25 you use it with your bare hands, correct?</p>
<p style="text-align: right;">Page 18</p> <p>1 M. BARNAR</p> <p>2 very uncomfortable with -- I mean, putting</p> <p>3 the phone next to my mouth during the</p> <p>4 pandemic so.</p> <p>5 Q. Do you sometimes use a sock over the</p> <p>6 phone or something like that?</p> <p>7 A. I always using a sock, yes, and I</p> <p>8 always forget to bring it here but that's why</p> <p>9 I have my mask on right now, and I use one of</p> <p>10 these prep wipes here (indicating). I don't</p> <p>11 know if you can see them, but this is what I</p> <p>12 use (indicating).</p> <p>13 Q. I can see it now.</p> <p>14 A. Yeah, this is what I bring to use to</p> <p>15 clean this phone (indicating), and there is</p> <p>16 nothing to clean this phone here either when</p> <p>17 I come.</p> <p>18 Q. I'll just say, for the record, that</p> <p>19 you just showed us on video a used alcohol</p> <p>20 prep pad.</p> <p>21 A. Yes.</p> <p>22 Q. Have you ever observed anybody</p> <p>23 sanitizing or cleaning phones or video</p> <p>24 booths?</p> <p>25 A. In here, no, absolutely not.</p>	<p style="text-align: right;">Page 20</p> <p>1 M. BARNAR</p> <p>2 A. Absolutely.</p> <p>3 Q. Are you provided with gloves in</p> <p>4 order to protect your hands when you're using</p> <p>5 this solution?</p> <p>6 A. No, and just to add, I don't think</p> <p>7 that stuff is environmental friendly. Let's</p> <p>8 say I clean the phone with it and put it next</p> <p>9 to my face, I don't think that should happen.</p> <p>10 Q. Like it might cause some nausea or</p> <p>11 might --</p> <p>12 A. Just a rash or something of the</p> <p>13 sort. If it's not good for my hands, it's</p> <p>14 not good for my face either.</p> <p>15 Q. Have you ever observed a correction</p> <p>16 officer be disciplined or, you know, told</p> <p>17 that they need to start wearing a mask?</p> <p>18 A. Here and there. The captain walks</p> <p>19 to me, if they're not wearing it properly or</p> <p>20 on, they may say, "Put your mask on properly"</p> <p>21 or "Put your mask on," or whatever.</p> <p>22 Q. Has that just been in the last week</p> <p>23 or two?</p> <p>24 A. It's pretty much been like since the</p> <p>25 pandemic it's gotten better. They have</p>

<p style="text-align: right;">Page 21</p> <p>1 M. BARNAR</p> <p>2 gotten better as far as like wearing it.</p> <p>3 Before they may have a little more lackadaisy</p> <p>4 without wearing the mask, so they may have</p> <p>5 been told more then.</p> <p>6 Q. What timeframe are you referring to?</p> <p>7 A. Within the last six months.</p> <p>8 Q. But even then, you said still 30 to</p> <p>9 40 percent are still not wearing masks</p> <p>10 properly?</p> <p>11 A. Correct.</p> <p>12 MR. THAYER: Objection.</p> <p>13 Q. Mr. Barnar, is there anything else</p> <p>14 that you think is important for the court to</p> <p>15 know about regarding sanitation of high-touch</p> <p>16 surfaces or guards wearings masks?</p> <p>17 A. As far as like the high-touch</p> <p>18 surfaces, I'm just very uneasy. There is</p> <p>19 nothing really being done about it. The</p> <p>20 doorknobs, the hot pots. As inmates or</p> <p>21 detainees, we are pretty much taking it upon</p> <p>22 ourselves to do more about the cleaning of</p> <p>23 high-touch areas. The flushometers, the seat</p> <p>24 knobs in the bathroom, things of that sort.</p> <p>25 Housekeeping may come and clean the bathroom,</p>	<p style="text-align: right;">Page 23</p> <p>1 M. BARNAR</p> <p>2 Do they abide by it? Search comes. The</p> <p>3 searchers was there yesterday. They said</p> <p>4 just deal with it, you know what I mean.</p> <p>5 They would tell everyone in the dorm to go in</p> <p>6 there, like as of yesterday on just the</p> <p>7 search. Just deal with it momentarily,</p> <p>8 which, I mean, I don't think that makes</p> <p>9 sense. So, you know, they're lackadaisy with</p> <p>10 certain rules that they have posted up and</p> <p>11 abide by themselves, they don't, you know</p> <p>12 what I'm saying, stick to them or they'll</p> <p>13 bend them when need be so.</p> <p>14 Q. Like social distancing rules?</p> <p>15 A. Absolutely.</p> <p>16 Q. Is there anything else that you can</p> <p>17 think of at this time that you think the</p> <p>18 court should know?</p> <p>19 A. Not offhand. I think I spoke to you</p> <p>20 before about they had an outbreak in a</p> <p>21 certain dorm. The officers who work in other</p> <p>22 dorms, they'll work in our dorm, so if there</p> <p>23 is an outbreak in, let's say, Dorm 2 or where</p> <p>24 they quarantined in Dorm 4, those same</p> <p>25 officers work the other blocks. So I don't</p>
<p style="text-align: right;">Page 22</p> <p>1 M. BARNAR</p> <p>2 but they're not cleaning any doorknobs, any</p> <p>3 hot pots, any knobs for water fountains or</p> <p>4 things of that sort. So, I mean, they can do</p> <p>5 much better.</p> <p>6 Q. You mentioned that you are in NIC</p> <p>7 Dorm 3, right?</p> <p>8 A. Yes, correct.</p> <p>9 Q. Does each dorm in NIC have both its</p> <p>10 own bunk room and its own dayroom?</p> <p>11 A. Yes. As far as like the mask</p> <p>12 wearing, like I said, they have gotten better</p> <p>13 but they were really lackadaisy with it. I</p> <p>14 didn't go out to court or anything to</p> <p>15 contract COVID. It was definitely brought to</p> <p>16 me and I contracted it so I'm very just</p> <p>17 uneasy about contracting it again.</p> <p>18 Q. Your dorm room and your dayroom, do</p> <p>19 those have, is it open air and you're getting</p> <p>20 lots of outside air, or it's a closed</p> <p>21 environment?</p> <p>22 A. We have windows. The dayroom is</p> <p>23 kind of confined. They have squares on the</p> <p>24 floors. It's supposed to be max 8 or 10</p> <p>25 people in the area. They had it marked off.</p>	<p style="text-align: right;">Page 24</p> <p>1 M. BARNAR</p> <p>2 know how that works. They wouldn't have a</p> <p>3 certain officers stay designated and in a</p> <p>4 quarantined dorm so, I mean, I guess things</p> <p>5 could be spread around that way so. But</p> <p>6 that's about it.</p> <p>7 MR. KEENAN: Thank you very</p> <p>8 much, Mr. Barnar. Those are all the</p> <p>9 questions I've got for you at this</p> <p>10 time on these topics.</p> <p>11 THE WITNESS: Okay, sir, thank</p> <p>12 you.</p> <p>13 EXAMINATION BY</p> <p>14 MR. THAYER:</p> <p>15 Q. Hi, Mr. Barnar. My name is David</p> <p>16 Thayer. I briefly introduced myself to you</p> <p>17 earlier. I am an attorney at the New York</p> <p>18 City Law Department and represent the</p> <p>19 defendants in this case. I'm going to ask</p> <p>20 you a few questions now, and I think I would</p> <p>21 just like to start off where you just left</p> <p>22 off.</p> <p>23 You mentioned that there was an</p> <p>24 outbreak in a dorm at NIC?</p> <p>25 A. Right.</p>

<p style="text-align: right;">Page 25</p> <p>1 M. BARNAR</p> <p>2 Q. Do you recall when that outbreak</p> <p>3 happened?</p> <p>4 A. Maybe -- maybe a month. I know -- I</p> <p>5 mean, this is give or take, but it was in</p> <p>6 Dorm 2 and -- yes, before then it was in Dorm</p> <p>7 4 as well so.</p> <p>8 Q. So you're saying that there was an</p> <p>9 outbreak in Dorm 2 a month ago or a month</p> <p>10 into the pandemic?</p> <p>11 A. No, a month ago.</p> <p>12 Q. Then previously you're saying that</p> <p>13 there was an outbreak in Dorm 4, right?</p> <p>14 A. Before the outbreak in Dorm 2, there</p> <p>15 was an outbreak in Dorm 4.</p> <p>16 Q. Do you recall when that outbreak in</p> <p>17 Dorm 4 was?</p> <p>18 A. Not exactly, no.</p> <p>19 Q. Was it within the last six months?</p> <p>20 A. Yes.</p> <p>21 Q. You also mentioned, I believe, a</p> <p>22 security search in the dayroom; is that</p> <p>23 correct?</p> <p>24 A. Okay, so when we spoke about that.</p> <p>25 A facility search was here yesterday, so</p>	<p style="text-align: right;">Page 27</p> <p>1 M. BARNAR</p> <p>2 quite some time so.</p> <p>3 Q. Do you ever have an occasion to</p> <p>4 remind them to wear their masks?</p> <p>5 A. Yes.</p> <p>6 Q. How would you say mask wearing is in</p> <p>7 your housing area? Do many people wear their</p> <p>8 masks, some, none at all?</p> <p>9 A. We do. Like when we go closer to</p> <p>10 interact with other people, yes, the mask</p> <p>11 wearing is good. We are now more having</p> <p>12 access to the masks. It's been quite some</p> <p>13 time now we've had. If we have had access to</p> <p>14 anything we had masks, right, so the mask</p> <p>15 wearing is decent in the dorm. If I'm in my</p> <p>16 section, I'm sitting there I don't have my</p> <p>17 mask on, but if I move I put my mask on to</p> <p>18 the bathroom, eating areas, dayroom, these</p> <p>19 things.</p> <p>20 Q. You also mentioned the slop sink.</p> <p>21 Where in the housing area is that sink?</p> <p>22 A. Next to the control station.</p> <p>23 Q. Next to the control station?</p> <p>24 A. Yes.</p> <p>25 Q. How far from the control station and</p>
<p style="text-align: right;">Page 26</p> <p>1 M. BARNAR</p> <p>2 after we are searched in the bathroom area,</p> <p>3 we are told to go in the dayroom. This is</p> <p>4 where they send us before they actually</p> <p>5 search our personal property, right. So the</p> <p>6 people who are not being searched of your</p> <p>7 personal property, you are to stay in the</p> <p>8 dayroom. I'm just trying to give you a</p> <p>9 little bit of sense of what's going on. So</p> <p>10 let's say it's 20 people here and they are</p> <p>11 searching five people or six people, the rest</p> <p>12 of us are in the dayroom, all right. So they</p> <p>13 will tell them, "Listen, we're over the</p> <p>14 number of amount of people who is supposed to</p> <p>15 be here in the dayroom," and they would</p> <p>16 simply say, "Just deal with it so we can get</p> <p>17 in and out of here." So you just getting</p> <p>18 more in and out of here is more important</p> <p>19 than social distancing. So that's what it</p> <p>20 is. That's what I was saying about that.</p> <p>21 Q. How would you say your relationship</p> <p>22 is with the folks in your housing area?</p> <p>23 A. The detainees or the --</p> <p>24 Q. The detainees, yes.</p> <p>25 A. I'm well-affected. I've been there</p>	<p style="text-align: right;">Page 28</p> <p>1 M. BARNAR</p> <p>2 the slop sink are the phones?</p> <p>3 A. Ten feet maybe, give or take.</p> <p>4 Q. You mentioned that the slop sink</p> <p>5 does have sanitizing solution at it, right?</p> <p>6 A. Yes.</p> <p>7 Q. What about the mildew solution that</p> <p>8 you mentioned earlier, where does that come</p> <p>9 from?</p> <p>10 A. The control station or sometimes</p> <p>11 it's in the slop sink.</p> <p>12 Q. Is there a janitor's closet or a</p> <p>13 supply closet in your housing area?</p> <p>14 A. Well, I guess that's what I'm</p> <p>15 calling the slop sink. It's where the</p> <p>16 brooms, mops, brooms or dustpans and things</p> <p>17 of that sort.</p> <p>18 Q. You mentioned that there are a</p> <p>19 number of sanitizing solutions there, right?</p> <p>20 A. Yes, it's a dispensary.</p> <p>21 Q. Do you have ready access to the slop</p> <p>22 sink or the closet, what have you?</p> <p>23 A. I ask the officer to open it any</p> <p>24 time.</p> <p>25 Q. You mentioned that sometimes you</p>

<p style="text-align: right;">Page 29</p> <p>1 M. BARNAR</p> <p>2 have admonished officers to wear their masks.</p> <p>3 What do they say to you when you do that?</p> <p>4 A. They would just say, "Oh, yeah.</p> <p>5 Sorry." and just put it on.</p> <p>6 Q. You mentioned that you became ill</p> <p>7 with COVID in the course of the last year,</p> <p>8 correct?</p> <p>9 A. The previous year. I think around</p> <p>10 April or May or something of the sort.</p> <p>11 Q. April or May of 2020?</p> <p>12 A. Yes.</p> <p>13 Q. Have you been vaccinated?</p> <p>14 A. No.</p> <p>15 Q. You have not?</p> <p>16 A. No.</p> <p>17 Q. Why is that?</p> <p>18 A. I'm just not comfortable with it.</p> <p>19 They produced it too fast. I need some more</p> <p>20 research.</p> <p>21 Q. Have you been tested for COVID</p> <p>22 antibodies?</p> <p>23 A. With the antibodies, that's how I</p> <p>24 found out I contracted COVID. I think that</p> <p>25 was in June.</p>	<p style="text-align: right;">Page 31</p> <p>1 M. BARNAR</p> <p>2 myself, and things of that sort, keeping my</p> <p>3 mask on.</p> <p>4 Q. Mr. Barnar, a couple of questions.</p> <p>5 First you mentioned testing and it seems that</p> <p>6 was because you have a C-PAP machine?</p> <p>7 A. Yes.</p> <p>8 Q. Are you aware of whether regular</p> <p>9 testing is required for all persons with</p> <p>10 C-PAP machines?</p> <p>11 A. In Dorm 3, yes.</p> <p>12 Q. How many would you estimate people</p> <p>13 are there who have C-PAP machines in Dorm 3?</p> <p>14 A. Maybe five or six.</p> <p>15 Q. How many detainees are housed in</p> <p>16 Dorm 3 right now to the best of your</p> <p>17 knowledge?</p> <p>18 A. Maybe to my knowledge about 15 or</p> <p>19 so.</p> <p>20 Q. You mentioned also that you fought</p> <p>21 with the administration. Can you tell me a</p> <p>22 little bit more about that?</p> <p>23 A. Not physically fighting.</p> <p>24 Q. No, I understand.</p> <p>25 A. But, you know, going back and forth</p>
<p style="text-align: right;">Page 30</p> <p>1 M. BARNAR</p> <p>2 Q. In June of 2020 you were tested for</p> <p>3 the antibodies?</p> <p>4 A. Correct.</p> <p>5 Q. Have you been subsequently tested</p> <p>6 for the antibodies?</p> <p>7 A. No.</p> <p>8 Q. I think I just have a couple more</p> <p>9 questions. You mentioned, for example, that</p> <p>10 you sometimes put soap and water on a paper</p> <p>11 towel or something to wipe down the phone and</p> <p>12 you wear your mask fairly regularly it sounds</p> <p>13 like. Are there any other things that you do</p> <p>14 to keep yourself safe from COVID?</p> <p>15 A. We are tested weekly because I have</p> <p>16 a CPAP machine so medical requires that I'm</p> <p>17 tested weekly. But I am definitely -- I keep</p> <p>18 my social distance. We fight with the</p> <p>19 administration sometimes because they want to</p> <p>20 go against the social distance. They want to</p> <p>21 take the cap off. They would have 50 percent</p> <p>22 but they were saying they want to take the</p> <p>23 cap off for social distance and NIC in Dorm</p> <p>24 3. So that as far as like the social</p> <p>25 distance, cleaning the high-touch areas</p>	<p style="text-align: right;">Page 32</p> <p>1 M. BARNAR</p> <p>2 like, "Listen, you have your signs up saying</p> <p>3 social distance. Fauci is saying social</p> <p>4 distance. Why are you going against it now?"</p> <p>5 And this is what I -- back and forth with the</p> <p>6 deputies and the captains and things of that</p> <p>7 sort. They were just like, "We're going to</p> <p>8 send some people in there." We're like,</p> <p>9 "What are you doing?" So things are like</p> <p>10 that. That's what I mean by fighting with</p> <p>11 administration.</p> <p>12 Q. So was this raised through a</p> <p>13 grievance or the Inmate Council?</p> <p>14 A. As far as like going against the</p> <p>15 social distance or the way we were fighting</p> <p>16 with the administration?</p> <p>17 Q. The way that you were saying, "Hey,</p> <p>18 Fauci is saying 'X, Y, Z'"?</p> <p>19 A. Verbally when they walk, when they</p> <p>20 do their tours through grievance and through</p> <p>21 311. We have 311 calls numerous and things</p> <p>22 of that sort, so yes.</p> <p>23 MR. THAYER: I think that's it</p> <p>24 for me. Thank you, Mr. Barnar.</p> <p>25 CONTINUED EXAMINATION BY</p>

<p style="text-align: right;">Page 33</p> <p>1 M. BARNAR</p> <p>2 MR. KEENAN:</p> <p>3 Q. Mr. Barnar, just some follow-up</p> <p>4 questions. We've talked about the sanitizing</p> <p>5 solution that is near the slop sink.</p> <p>6 Do you know what type of sanitizing</p> <p>7 solution that is?</p> <p>8 A. No, I don't. I know -- I don't</p> <p>9 think it's environmental friendly as far as</p> <p>10 like should be on your face, your hands</p> <p>11 neither, that sort. Basically it's for the</p> <p>12 floors and things of that sort, to mop and</p> <p>13 clean the floors. That's what it's for.</p> <p>14 It's not for, you know, the phones. I guess</p> <p>15 it could be used for the high-touch areas and</p> <p>16 things of that sort. You know.</p> <p>17 Q. But your understanding is it's</p> <p>18 really a floor cleaner?</p> <p>19 A. It's a -- I don't necessarily say</p> <p>20 it's a floor cleaner. I know they use it for</p> <p>21 the floor predominantly before the pandemic</p> <p>22 or whatever and things of that sort, to clean</p> <p>23 the bathroom with, things like that.</p> <p>24 Q. What does it smell like?</p> <p>25 A. One of them is called Virex. Some</p>	<p style="text-align: right;">Page 35</p> <p>1 M. BARNAR</p> <p>2 how to use Virex?</p> <p>3 A. No.</p> <p>4 Q. Do you know what's necessary to use</p> <p>5 Virex effectively?</p> <p>6 A. No, I don't.</p> <p>7 Q. Do you know how you would apply</p> <p>8 Virex if you wanted to?</p> <p>9 A. No, I don't. It comes out of the</p> <p>10 dispenser. I know it's a cleaning solution.</p> <p>11 We just take it upon ourselves to use it to</p> <p>12 clean things. You know, we were hoping that</p> <p>13 it will kill the COVID, that's it. That's</p> <p>14 it. No one has really instructed us how to</p> <p>15 use any of those chemicals there.</p> <p>16 Q. Has Virex always been available near</p> <p>17 the slop sink for the whole pandemic or is</p> <p>18 that more recent, or give us a sense of how</p> <p>19 available Virex is?</p> <p>20 A. That dispenser, like I said, it</p> <p>21 comes out through a dispenser. I guess</p> <p>22 diluted with the water the way it comes out</p> <p>23 of the hose and, yeah, that's been there.</p> <p>24 That's always been there.</p> <p>25 Q. In order to use Virex, do you know</p>
<p style="text-align: right;">Page 34</p> <p>1 M. BARNAR</p> <p>2 of them have good smells, pleasant smells,</p> <p>3 and some of them have -- I think it's four of</p> <p>4 them. One of them has a good smell. The</p> <p>5 rest of them smells like chemicals, cleaning</p> <p>6 solution. Things of that sort.</p> <p>7 Q. Virex, how is the Virex -- I guess I</p> <p>8 want to clarify, is there just one type of</p> <p>9 cleaning solution or are there multiple types</p> <p>10 of cleaning solution in the slop sink, near</p> <p>11 the slop sink?</p> <p>12 A. It's four different cleaning</p> <p>13 solutions in the slop sink, yes.</p> <p>14 Q. The one that you said was primarily</p> <p>15 used to clean the floors before the pandemic,</p> <p>16 is that Virex or is it something else?</p> <p>17 A. Well, I think like I was saying,</p> <p>18 before the pandemic all three of them were</p> <p>19 used for the floors, to clean the pantry, the</p> <p>20 bathroom, things of that sort.</p> <p>21 Q. Do you have Virex near the slop</p> <p>22 sink?</p> <p>23 A. That's one of the solutions that's</p> <p>24 there, yes.</p> <p>25 Q. Have you been given instructions on</p>	<p style="text-align: right;">Page 36</p> <p>1 M. BARNAR</p> <p>2 whether you need to have gloves on?</p> <p>3 A. Well, I'm almost certain that you do</p> <p>4 because I work in the pantry, right, and when</p> <p>5 I use it, and when I use it without the</p> <p>6 gloves I will get maybe dry or peeling skin</p> <p>7 so, yeah, I know you're supposed to have</p> <p>8 gloves on.</p> <p>9 Q. Mr. Barnar, is there any of your</p> <p>10 testimony today that you think you need to</p> <p>11 clarify or correct in any way?</p> <p>12 A. No.</p> <p>13 (Continued on next page to</p> <p>14 accommodate jurat.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 37</p> <p>1 M. BARNAR</p> <p>2 Q. Anything else that you think the</p> <p>3 Court needs to know about regarding these</p> <p>4 topics we've discussed today right now, mask</p> <p>5 wearing and sanitation of high-touch</p> <p>6 surfaces?</p> <p>7 A. No, I think that would be all, sir.</p> <p>8 MR. KEENAN: Mr. Barnar, those</p> <p>9 are all the questions I have for you</p> <p>10 on these topics at this time.</p> <p>11 THE WITNESS: Okay, great.</p> <p>12 MR. THAYER: Thank you,</p> <p>13 Mr. Barnar.</p> <p>14 MR. KEENAN: We'll close the</p> <p>15 record here.</p> <p>16 (Whereupon, at 4:52 p.m., the</p> <p>17 Examination of this Witness was</p> <p>18 concluded.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 39</p> <p>1 INDEX</p> <p>2</p> <p>3 EXAMINATION BY: PAGE</p> <p>4 Mr. Keenan 7, 34</p> <p>5 Mr. Thayer 26</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 38</p> <p>1 DECLARATION</p> <p>2</p> <p>3 I hereby certify that having been first</p> <p>4 duly sworn to testify to the truth, I gave</p> <p>5 the above testimony.</p> <p>6</p> <p>7 I FURTHER CERTIFY that the foregoing</p> <p>8 transcript is a true and correct transcript</p> <p>9 of the testimony given by me at the time and</p> <p>10 place specified hereinbefore.</p> <p>11</p> <p>12</p> <p>13</p> <p>14 _____</p> <p>15 MAURICE BARNAR</p> <p>16</p> <p>17 Subscribed and sworn to before me</p> <p>18 this ____ day of _____ 20__.</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 NOTARY PUBLIC</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 40</p> <p>1 EXHIBITS</p> <p>2</p> <p>3 NONE</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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REQUESTS

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RULINGS:	PAGE LINE
NONE	

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CERTIFICATE

STATE OF NEW YORK)
: SS.:
COUNTY OF QUEENS)

I, Elizabeth A. Hoban, a stenotype reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness, MAURICE BARNAR, whose Examination Before Trial is hereinbefore set forth, was first duly sworn by me, and that such Examination Before Trial is a true and accurate record of the testimony given by said witness; and I further certify that I am not related to any of the parties of this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 23rd day of April, 2021.

Elizabeth Hoban
ELIZABETH A. HOBAN

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