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

LORETTA LOPEZ, as Administratrix of the ESTATE OF VALLIA VALENE KARAHARISIS, Plaintiff, v. BUCKS COUNTY, *et al.*, Defendants.	Civil No. 2:15-cv-05059-JS

MEMORANDUM OF LAW IN SUPPORT OF THE *BUCKS COUNTY COURIER TIMES*' MOTION TO INTERVENE AND UNSEAL

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PRELIMINARY STATEMENT

Bucks County Correctional Facility and its medical contractor PrimeCare Medical, Inc. ("PrimeCare" and, together, "Defendants") have been repeatedly sued in recent years for allegedly failing to provide adequate medical care to inmates.[1] Proposed Intervenor, *Bucks County Courier Times*, and other news outlets have reported on these suits that include allegations of civil rights violations against individuals suffering from mental health disorders,[2] failure "to properly evaluate and monitor" inmates,[3] "failure to address known weaknesses with its treatment and monitor policies" for inmates experiencing substance withdrawal,[4] and a pattern of "'deliberate indifference' to the care and safety of inmates."[5] According to *Bucks County Courier Times*, in 2022 alone, five Bucks County Correctional Facility inmates died in custody and three wrongful death suits were settled.[6] This case, involving the death of Vallia Valene Karaharisis, was settled in 2016.[7]

In September 2015, Ms. Karaharisis's Estate filed the instant suit against the Defendants, alleging that Ms. Karaharisis's death "was the direct and proximate result of the actions and

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[1] *See, e.g.*, *Medzadourian v. Bucks County et al*, No. 2:19-CV-04752 (E.D. Pa. Oct 11, 2019); *Adami et al v. County of Bucks et al*, No. 2:19-CV-02187, (E.D. Pa. May 20, 2019); *Farrington v. County of Bucks, PA et al*, No. 2:17-CV-05826, (E.D. Pa. Dec. 29, 2017); *Lopez v. Bucks County et al*, No. 2:15-CV-05059 (E.D. Pa. Sep. 10, 2015).

[2] *See* Brett Sholtis, *Bucks County, prison guards sued for pepper spraying, restraining woman with mental illness* (Apr. 27, 2022), https://whyy.org/articles/bucks-county-prison-kim-stringer-lawsuit-mental-illness-retraint/

[3] *See* Jo Ciavaglia, *Settlement unsealed in 2018 inmate suicide at Bucks County jail. Here's what was paid Family of Bucks man who died in jail to receive $1M in settlement with county, medical provider* (Jul. 31, 2023), https://www.phillyburbs.com/story/news/local/2023/07/31/primecare-medical-charles-freitag-lawsuit-jail-wrongful-death-bucks-county-corrections-settlement/70364283007/ https://www.phillyburbs.com/story/news/special-reports/2022/06/28/bucks-county-jail-settlement-frederick-adami-opiate-withdrawal-crime-healthcare-primecare/65360556007/ [hereinafter Ciavaglia, *Settlement unsealed in 2018 inmate suicide*].

[4] Jo Ciavaglia, *Bucks County to pay $300K to settle wrongful death lawsuit filed by family of jail inmate* (Sep. 8, 2022), https://www.phillyburbs.com/story/news/local/2022/09/09/bucks-county-settles-lawsuit-suicide-death-of-jail-inmate/66836332007/ [hereinafter Ciavaglia, *Bucks County to pay $300K*]

[5] Jo Ciavaglia, *Is Bucks County jail unit 'rampant' with drugs? Inmate death blamed on pattern of neglect* (Aug. 24, 2023), https://www.phillyburbs.com/story/news/local/2023/08/24/bucks-county-jail-joshua-patterson-drugs- fentanyl-lawsuit-death-inmate-pa-corrections/70642900007/ [hereinafter Ciavaglia, *Is Bucks County jail unit 'rampant' with drugs?*].

[6] Jo Ciavaglia, *Name of latest Bucks County inmate death released; earlier inmate death a drug overdose* (Mar. 3, 2023), https://www.phillyburbs.com/story/news/local/2023/03/02/bucks-county-jail-reports-second-inmate-death-in-2023/69962567007/ [hereinafter Ciavaglia, *Name of latest Bucks County inmate death released*].

[7] *See* Dkt. Nos. 77-82.

inactions of defendants[.]"[8]

Specifically, Ms. Karaharisis's Estate alleged that the Defendants failed to exercise proper care and oversight of Ms. Karaharisis as she went through heroin detoxification.[9] However, those allegations were never tested at trial because the parties settled. As a result, much of the information about Ms. Karaharisis's death remains shrouded in secrecy. The *Bucks County Courier Times* therefore seeks to intervene and moves this Court to unseal the full settlement, including the agreement between the Estate and PrimeCare and any related records. *See* Dkt. Nos. 78-79.

PROCEDURAL HISTORY

In September 2015, Loretta Lopez, as Administratrix of decedent Vallia Valene Karaharisis's Estate, filed a wrongful death and survival action in this Court against Bucks County, PrimeCare, and various individual defendants. Weeks before the suit was resolved, a settlement conference took place on Nov. 30, 2016. Dkt. No. 77. The following day, Lopez filed a Petition under seal. *See* Dkt. No. 78. The next day, the Court issued an Order under seal. *See* Dkt. No. 79. Proposed Intervenor seeks access to the sealed Petition and Order.

FACTUAL BACKGROUND

a. The Wrongful Death Suit

The *Bucks County Courier Times* is the largest news organization in the Philadelphia suburbs, publishing in print and online at www.phillyburbs.com.[10] The news outlet has repeatedly reported on Bucks County Correctional Facility and the quality of medical and mental health care administered there by its private medical contractor PrimeCare.[11] The *Bucks County Courier Times* is particularly interested in the inmate deaths allegedly caused by Defendants' deficient

[8] Compl. ¶ 53.
[9] *Id.* ¶ 41, 45-52
[10] *See* Bucks County Courier Times, FACEBOOK, https://www.facebook.com/phillyburbsnews/ (last visited September 4, 2024).
[11] *See, e.g.*, Ciavaglia, *Settlement unsealed in 2018 inmate suicide*, *supra* note 3.

care,[12] including the death of Vallia Valene Karaharisis.

Ms. Karaharisis allegedly died due to complications from heroin withdrawal. Compl. ¶ 44. In its Complaint, Ms. Karaharisis's Estate alleged her death was a result of the Defendants' failure to properly monitor and care for her while she was undergoing heroin detoxification in the Bucks County Correctional Facility. *Id*. ¶ 53. Medical staff at the jail were allegedly aware, according to the Complaint, that Ms. Karaharisis was a "heavy user" of heroin at risk of health issues related to detoxification, *id*. ¶¶ 22, 30-32, including "dehydration, electrolyte imbalance, neurological arrhythmia (seizures) or cardiac arrhythmias leading to sudden cardiac arrest." *Id*. ¶ 33. While in custody, Ms. Karaharisis "complain[ed] of a particularly difficult detoxification including the complete inability to eat solid foods and minimal ability to drink fluids." *Id*. ¶ 46. However, according to the Complaint, the staff "conducted only minimal assessments" of Ms. Karaharisis's health and took no action when they learned she "had not eaten in four days[.]" *Id*. ¶ 48. She was found unresponsive in her cell three days after her admission to the correctional facility, and she was shortly thereafter pronounced deceased. *Id*. ¶¶ 42-43.

In response to the allegedly deficient care of Ms. Karaharisis and her death, the administratrix of her Estate filed suit against the defendants in September 2015. The suit alleged that Ms. Karaharisis's death "was the direct and proximate result of the actions and inactions of defendants." *Id*. ¶ 53. The complaint alleged staff members failed to properly monitor Ms. Karaharisis and that these individual failures were due to the broader "failure of . . . Bucks County and PrimeCare . . . to establish appropriate policies, practices and procedures for the monitoring and assessment of inmates undergoing detoxification from heroin and other opiates after

[12] Jo Ciavaglia, *Family files wrongful death suit against Bucks County over prison suicide* (Dec. 6, 2019), https://www.phillyburbs.com/story/news/2019/12/06/family-files-wrongful-death-suit/2137120007/ [hereinafter Ciavaglia, *Family files wrongful death suit*]; Jo Ciavaglia, *Judge: Wrongful death suit against Bucks County jail can proceed* (June 29, 2020), https://www.phillyburbs.com/story/news/2020/06/29/judge-wrongful-death-suit-against-bucks-county-jail-can-proceed/112814702/ [hereinafter Ciavaglia, *Wrongful death suit can proceed*]; Ciavaglia, *Bucks County to pay $300K*, *supra* note 3.

admission[.]" *Id*. ¶ 52. For example, the Complaint alleges there was a "policy . . . of correctional and medical staff at [the jail] to assign inmates, referred to as 'babysitters,' the responsibility to monitor persons undergoing detoxification," despite the fact that those inmates had "no training, medical or otherwise[.]" *Id*. ¶ 51. The Complaint alleges that Bucks County and PrimeCare were deficient in their care despite their knowledge "of the medical issues presented in an inmate population," including "the need for monitoring of persons admitted to correctional facilities with histories of heroin or other opiate abuse." *Id*. ¶¶ 36-37.

On December 1, 2016, the administratrix of Ms. Karaharisis's Estate—her mother Loretta Lopez—filed a petition under seal, Dkt. No. 78, and Judge Sanchez signed an order under seal the same day, Dkt. No. 79. These records appear to relate to a settlement between the Defendants and Ms. Karaharisis's estate.

b. News Outlets' Attempts to Access the Settlement Records

On February 2, 2021, because these are matters of public concern, the *Bucks County Courier Times* filed a public records request pursuant to the Right to Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking all settlement documents in which the Defendants were party over a seven-year period. *See* Final Determination, *Ciavaglia v. Bucks County*, No. AP 2021-0876, at *1 (Pa. Off. Open Recs. July 26, 2021), available at https://www.openrecords.pa.gov/Appeals/DocketGetFile.cfm?id=72079 [hereinafter "OOR Final Determination"]. On appeal, the state Office of Open Records ("OOR") rightly held that PrimeCare performed a governmental function, but wrongly held that its settlement agreements do not "directly relate" to that governmental function. *Id*. at *5–7 (citing *Allegheny Cnty. Dep't of Admin. Servs. v. A Second Chance, Inc*., 13 A.3d 1025, 1039 (Pa. Commw. Ct. 2011); 65 P.S. § 67.305(a)). To determine if such records "directly relate," courts look to whether the records are relevant to the third-party contractor's performance of its governmental function. *See Buehl v. Office of Open Records*, 6 A.3d 27 (Pa. Commw. Ct. 2010); *Giurintano v. Dep't of Gen. Servs*.,

20 A.3d 613, 615 (Pa. Commw. Ct. 2011). The OOR read *Buehl* "for the proposition that a vendor's costs [paid for commissary goods] to perform its contractual obligations are not directly related to the underlying contract," when the government did not review or approve of those costs. OOR Final Determination at *7.

Here, while PrimeCare is not ultimately "required to consult or seek the County's approval to engage in settlement discussions or agreements," *id*., Bucks County and PrimeCare are co-defendants who reached a joint settlement with Plaintiff. Unlike in *Buehl*, in which the government failed to participate in the wholesale purchasing of commissary goods, Bucks County actively participated in the inadequate medical care and wrongful death litigation and settlement process and agreed to the joint settlement. And also unlike in *Buehl*, where the wholesale prices affected the vendor alone, PrimeCare's alleged failure to perform its obligations "directly relat[ed]" to its contract cost Bucks County taxpayers $250,000.

Although the OOR Final Determination granted a portion of the RTKL request seeking settlement records with Bucks County, it denied attempts to gain access to records concerning PrimeCare, effectively stymying access through the state public records law.

Then, in a separate attempt to access these documents, Proposed Intervenor sent PrimeCare a letter on October 24, 2023, asking it to produce the sealed settlement records in this case as well as sealed settlement records in dozens of other cases brought by inmates or their estates against PrimeCare. But PrimeCare failed to respond to the request and did not concur in the filing of this motion. Proposed Intervenor thus moves this Court to allow it to intervene to seek unsealing of the settlement records.

Bucks County Courier Times previously successfully moved to intervene and unseal settlement records in other cases concerning PrimeCare's allegedly inadequate medical care. *See*

Reilly v. York County, No. 1:18-cv-01803 (M.D. Pa.); *Freitag v. Bucks County*, No. 2:19-cv-05750-JMG (E.D. Pa.); *Harbaugh v. York County*, No. 2:20-cv-01685 (E.D. Pa.). Notably, although the parties did not concur with intervenor's motions, no party in those cases filed an opposition brief.

QUESTION PRESENTED

Should the Court allow the *Bucks County Courier Times* to intervene and move to unseal settlement records related to Bucks County Correctional Facility's medical contractor?

Suggested answer: Yes.

ARGUMENT

This Court should grant the *Bucks County Courier Times*' motion to intervene and unseal the settlement agreement for the following reasons. First, the *Bucks County Courier Times* has standing to intervene. Second, both the First Amendment and common law rights of access entitle the public and the press to access filed settlement agreements. Third, the settlement agreement and its related records were improperly sealed because no party made the requisite factual good cause showing. The *Bucks County Courier Times*'s motion to intervene and unseal should thus be granted.

I. THE *BUCKS COUNTY COURIER TIMES* HAS STANDING TO INTERVENE.

The *Bucks County Courier Times* seeks to intervene to vindicate the public's constitutional and common law rights to access judicial records. Third parties have standing to intervene and challenge the improper sealing of judicial records. *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 777 (3d Cir. 1994). This intervention is permissible "even after the underlying dispute between the parties has long been settled." *Id.* at 779. Accordingly, the *Bucks County Courier Times* has the right to intervene for the limited purpose of seeking a modification of the improvidently granted sealing order.

II. THE FIRST AMENDMENT AND COMMON LAW RIGHTS OF ACCESS APPLY TO THE DISPUTED SETTLEMENT RECORDS.

As recognized by the United States Supreme Court and the Third Circuit, the public has rights of access to judicial proceedings and their records under common law and the First Amendment. When evaluating these rights, courts conduct a two-step inquiry: determining first whether the right attaches to the document or proceeding at issue, and, if so, whether the strong presumption of openness is overcome in a particular case. *See Press-Enter. Co. v. Superior Ct. of California for Riverside Cnty.*, 478 U.S. 1, 13 (1986).

It is well established that both rights of access apply to judicial records. The Third Circuit has explicitly found that settlement agreements filed with a court are judicial records under the common law. Further, experience and logic counsel that the First Amendment right of access also extends to settlement agreements. Thus, because the settlement records sought here are judicial records filed with the Court, both the common law and First Amendment rights of access attach to the settlement records.

a. First Amendment Right of Access

The United States Supreme Court first recognized a First Amendment right of access to court records over forty years ago. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980). While originally limited to criminal proceedings, the Third Circuit has since extended this right to civil proceedings and their records. *See Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1070 (3d Cir. 1984).[13] Neither the Supreme Court nor the Third Circuit have directly held that this First Amendment right applies to settlement agreements. Yet, these settlement agreements pass the "tests of experience and logic," and therefore compel finding that "a qualified First Amendment right

[13] And the Third Circuit is not alone. Indeed, every circuit to examine the issue has done the same. *See, e.g.*, *Doe v. Pub. Citizen*, 749 F.3d 246, 269 (4th Cir. 2014); *Newman v. Graddick*, 696 F.2d 796, 801–02 (11th Cir. 1983).

of public access attaches." *See Press-Enter. Co*., 478 U.S. at 9; *see also PG Pub. Co. v. Aichele*, 705 F.3d 91, 104 (3d Cir. 2013). Because both prongs are clearly satisfied here, the *Bucks County Courier Times* has a constitutional right to access the sealed settlement records.

1. The Experience Prong

The experience prong supports attachment of a right of public access when "the place and process have historically been open to the press." *In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 924 F.3d 662, 673 (3d Cir. 2019) (quoting *N. Jersey Media Grp. Inc. v. United States*, 836 F.3d 421, 429 (3d Cir. 2016)). Here, the Third Circuit and other federal courts' practice of ensuring that settlement agreements and similar judicial records are publicly available satisfy this prong.

The Third Circuit has yet to address whether the First Amendment right of access applies to settlement agreements. *See, e.g.*, *PG Pub. Co. v. Aichele*, 705 F.3d at 104-06; *In re Avandia*, 924 F.3d at 675-76, 679. Nonetheless, settlement agreements fall neatly within the Third Circuit's precedents for finding such a right. Indeed, the Third Circuit has held that the right applies to a bevy of records similar to settlement agreements involving government contractors. S*ee, e.g.*, *Publicker*, 733 F.2d at 1066, 1070 (civil proceedings and transcripts); *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 659 (3d Cir. 1991) (civil judicial records). Indeed, any document "filed with the court, or otherwise somehow incorporated or integrated into a district court's adjudicatory proceedings" is a judicial record. *In re Cendant Corp.*, 260 F.3d 183, 192 (3d Cir. 2001). Settlement agreements, which are filed with a court, are thus judicial records with an attendant First Amendment right of access.

Similarly, the Third Circuit has extended the First Amendment right of access in the criminal context to "plea hearings and . . . documents related to those hearings." *See United States v. Thomas*, 905 F.3d 276, 282 (3d Cir. 2018). In doing so, the Court relied on a sister circuit's precedent for the proposition that "[j]ust as there exists a first amendment right of access in the context of criminal trials, it should exist in the context of the means by which most criminal

prosecutions are resolved, the plea agreement." *Id.* (quoting *Oregonian Publishing Co. v. U.S. District Court for the District of Oregon*, 920 F.2d 1462, 1465 (9th Cir. 1990)).

Taken together, the Third Circuit's treatment of civil judicial records and criminal plea agreements illustrate that a First Amendment right of access should apply with equal force to the settlement agreements that resolve most civil cases.

The experience prong requires more than merely "look[ing] to the particular practice of any one jurisdiction, but instead to the experience in that type or kind of hearing throughout the United States." *El Vocero de Puerto Rico v. Puerto Rico*, 508 U.S. 147, 150 (1993) (internal quotations omitted). Here, the Third Circuit's implicit support for a First Amendment right of access to civil settlement agreements follows a national trend. Throughout the United States, courts favor finding a right of access extends to court-filed settlement agreements. *See, e.g., Sec. & Exch. Comm'n v. Van Waeyenberghe*, 990 F.2d 845, 849 (5th Cir. 1993) ("Once a settlement agreement is filed in district court, it becomes a judicial record."); *Calderon v. SG of Raleigh*, No. 5:09-CV-00218-BR, 2010 WL 1994854, at *1 (E.D.N.C. May 18, 2010) (same); *Lin v. Comprehensive Health Mgmt., Inc.*, No. 08 Civ. 6519(PKC), 2009 WL 2223063, at *1 (S.D.N.Y. July 23, 2009) (same). In an analogous case about substandard medical care, the Second Circuit relied on that nationwide trend to find that the First Amendment right of access applied to the reports of compliance consultants appointed pursuant to a settlement reached in institutional-change litigation. *United States v. Erie Cnty.*, N.Y., 763 F.3d 235, 241–42 (2d Cir. 2014).

Pennsylvania courts, the Third Circuit and a nationwide trend show that settlement agreements "have historically been open to the press." *In re Avandia*, 924 F.3d at 673 (citation omitted). The experience prong thus supports a First Amendment right of access.

2. The Logic Prong

Under the logic prong, courts "evaluate[] 'whether public access plays a significant positive role in the functioning of the particular process in question.'" *Id.* (internal quotation marks

omitted). Public access to settlement agreements "furthers several societal interests" in the same way that access to plea agreements does. *See Thomas*, 905 F.3d at 282. Their disclosure "serves as a check on the integrity of the judicial process." *Bank of Am. Nat. Tr. & Sav. Ass'n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 345 (3d Cir. 1986). Such a check is enabled by "promoting the 'public perception of fairness'" and acknowledging the value of "'public scrutiny'" over "'the judicial process.'" *See Thomas*, 905 F.3d at 282. Thus, logic supports the conclusion that, when most cases resolve via settlements instead of trials, these settlements must be made public.

Ultimately, Third Circuit precedent and its experience-and-logic tests support a First Amendment right of access to the settlement records in this case. Because the *Bucks County Courier Times*' request to access the settlement records here meets the experience and logic test, a First Amendment right to access the settlement records applies here and the settlement documents must be unsealed accordingly.

b. Common Law Right of Access

The common law likewise supports the public's right of access. The common law right of access—a right that "antedates the Constitution"—aims "to promote[] public confidence in the judicial system by enhancing testimonial trustworthiness and the quality of justice dispensed by the court[.]" *LEAP Sys., Inc. v. Moneytrax, Inc.*, 638 F.3d 216, 220 (3d Cir. 2011) (internal quotation marks omitted). It thus embraces a "strong presumption of openness" of judicial proceedings and their records. *In re Avandia Mktg.*, 924 F.3d at 672. Indeed, the common law embraces a "mandate of openness" that "becomes particularly important in actions that concern public money[.]" *PA ChildCare LLC v. Flood*, 887 A.2d 309, 312 (Pa. Super. 2005).

Once a document is "filed with the court, or otherwise somehow incorporated or integrated into a district court's adjudicatory proceedings," the document is "clearly establishe[d]" as a judicial record and subject to this strong presumption of openness. *In re Cendant Corp.*, 260 F.3d

at 192. Settlement agreements thus qualify as judicial records subject to this presumption. *Rittenhouse*, 800 F.2d at 344 ("[T]he common law presumption of access applies to . . . settlement agreement[s]."); *see also LEAP Sys., Inc.*, 638 F.3d at 220 ("'[T]he court's approval of a settlement . . . are matters which the public has the right to know about and evaluate.' Thus, 'settlement documents can become part of the public component of a trial[.]'") (quoting *Rittenhouse*, 800 F.2d at 344).

Pennsylvania courts have likewise routinely applied the common law right of access to various settlement records. *See, e.g.*, *Storms v. O'Malley*, 779 A.2d 548, 568-70 & n.12 (Pa. Super. 2001) (affirming order denying request to seal settlement in a medical malpractice action involving a minor in part because "confidentiality clause could never be an essential term of an agreement" that "requires court approval[,]" given "court proceedings are a matter of public record"); *A.A. v. Glicken*, 237 A.3d 1165, 1170 (Pa. Super. 2020) (affirming order denying motion to seal petition to approve a minor's settlement agreement in part because "the chilling effect on settlements is insufficient, standing alone, to overcome the compelling interest in open records"); *Korczakowski v. Hwan*, 68 Pa. D. & C.4th 129,138 (Com. Pl. 2004) (denying motion to seal petition to approve settlement of wrongful death action where "litigants simply have not demonstrated the requisite 'good cause' to justify the sealing of this settlement involving public funds").

Here, the *Bucks County Courier Times* seeks access to the improperly sealed settlement records. The common law right of access attaches to these judicial records; they are thus presumed open to the public.

III. THE SETTLEMENT RECORDS SHOULD BE UNSEALED BECAUSE NO PARTY HAS OVERCOME THE HIGH BURDEN TO JUSTIFY SEALING THEM.

While neither the common law nor the First Amendment right of access are "absolute," *LEAP Sys., Inc.*, 638 F.3d at 221, there is a high burden to overcome the presumption that such rights are applicable. *See Rittenhouse*, 800 F.2d at 344. In assessing either, courts "must balance the

[public's] need for information against the injury that might result if uncontrolled disclosure is compelled." *In re Avandia*, 924 F.3d at 671. Further, courts must "articulate 'the compelling, countervailing interests to be protected,' make 'specific findings on the record,' and 'provide[] an opportunity for interested third parties to be heard.'" *Id.* at 672–73. "[S]pecificity is essential" and "[b]road allegations of harm, bereft of specific examples or articulated reasoning, are insufficient." *In re Cendant Corp.*, 260 F.3d at 194.

To overcome the First Amendment right of access, the movant must satisfy strict scrutiny. *In re Avandia*, 924 F.3d at 673. That showing requires a movant to demonstrate "an overriding interest [against openness] based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Id.* (internal quotations omitted). To overcome the presumption of openness from the common law right of access, a movant must "show that the interest in secrecy outweighs the presumption" of openness. *See Rittenhouse*, 800 F.2d at 344.

Here, no party can demonstrate either an overriding interest against openness or an interest in secrecy that outweighs the presumption that judicial records are open to the public. In fact, attempts to defeat the First Amendment or common law rights of access would be in vain, as defeating both rights of access requires specificity that is absent from records in this case.

Here, the record contains no evidence that PrimeCare argued for or that the Court found an overriding interest in closure prior to sealing the settlement agreement. Even if this Court had articulated findings on the record, none would be sufficient to justify closure, because the public interest in access overrides any arguments to justify sealing. In balancing the countervailing interests at stake in sealing, the Third Circuit recognizes several factors to consider, including two that are particularly relevant here: (1) "whether a party benefitting from the order of confidentiality is a public entity or official"; and (2) "whether the case involves issues important to the public." *In re Avandia*, 924 F.3d at 671.

Here, these records do not concern private parties alone. *Compare LEAP Sys., Inc.*, 638

F.3d at 222–23 (holding that privacy interest in sealing outweighed public's interest in openness in part because "[t]he parties are private entities" and "their dispute has no impact on the safety and health of the public") *with In re Cendant Corp.*, 260 F.3d at 194 (applying a heightened level of scrutiny because members of the public were parties to the action). Rather, they concern Commonwealth counties, their contractor performing a governmental function, and inmates or their estates. As the Chief Judge in the Middle District of Pennsylvania recently wrote in a similar case, "[e]ntering into a settlement agreement with a public entity involves the inherent risk that the agreement may be disclosed if it is subsequently requested under the RTKL." *Houseknecht v. Young*, No. 4:20-CV-01233, 2023 WL 5004050, at *3 (M.D. Pa. Aug. 4, 2023).

PrimeCare performs a governmental function because it exclusively provides medical care to the Bucks County Correctional Facility. *See Buehl v. Off. of Open Recs.*, 6 A.3d 27, 30 (Pa. Commw. Ct. 2010) (holding that providing prison commissary services qualifies as a governmental function subject to the RTKL). PrimeCare's actions here impact public tax expenditures and the health and safety of incarcerated individuals. Thus, the settlement records involve important matters of public interest, health, and safety. Yet, because the settlement records were sealed, questions remain concerning PrimeCare's portion of the settlement, even as it continues to serve as the prison's health care contractor. To answer these questions, the *Bucks County Courier Times* seeks access to the settlement records to shed further light on this matter of significant public concern. The public interest factors weigh heavily in favor of disclosure.

Further, no mitigating factors support sealing. While PrimeCare could attempt to argue that the settlement agreement contains "sensitive" information, this argument fails. "[S]ensitive" business information does not generally qualify as an overriding interest in confidentiality. *See Publicker*, 733 F.2d at 1074. While a court may seal business information "that might harm a litigant's competitive standing," this harm must amount to more than "[m]ere embarrassment." *In*

re Avandia, 924 F.3d at 679. No tangible harm of unsealing could exist for PrimeCare that would amount to more than mere embarrassment.

Similarly, any concern of Plaintiff over the risk of embarrassment is insufficient to support an argument for sealing the settlement records. To justify nondisclosure, there must be a "showing that disclosure will work a clearly defined and serious injury to the party seeking closure." *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir.1994) (quoting *Publicker*, 733 F.2d at 1071). Nondisclosure for embarrassment must be "particularly serious[.]" *Cipollone v. Liggett Group, Inc*., 785 F.2d 1108, 1121 (3d Cir.1986). A finding of particularly serious embarrassment must necessarily meet a high bar, because "[i]f mere embarrassment were enough, countless pleadings as well as other judicial records would be kept from public view." *Dombrowski v. Bell Atlantic Corp.*, 128 F.Supp.2d 216, 219 (E.D. Pa. 2000).

Moreover, "even if the initial sealing . . . was justified," a court "should closely examine whether circumstances have changed sufficiently to allow the presumption allowing access to court records to prevail.'" *Miller v. Indiana Hosp.*, 16 F.3d 549, 551-52 (3d Cir. 1994). To the extent that there is any genuinely confidential information in the records, the Court should redact that information rather than seal their entirety.

Thus, the settlement agreement's sealing cannot withstand strict scrutiny or the common law's less stringent standard. No party has demonstrated an overriding interest in sealing. And even if a party articulates some post-hoc interest in confidentiality, sealing is not a solution that is narrowly tailored to accommodate any such interest. Because both the First Amendment and common law rights of access mandate that these settlement records be accessible to the public, the *Bucks County Courier Times* requests permission to intervene to unseal these records and vindicate these public rights.

CONCLUSION

For the forgoing reasons, the *Bucks County Courier Times* requests permission to intervene for the limited purpose of seeking the unsealing of the settlement agreements and related records in Dkt. Nos. 78-79. Should this Court decline to release these records, the *Bucks County Courier Times* requests that the Court make findings on the record explaining why the settlement records do not fall within the First Amendment and common law rights of access.

Dated: September 12, 2024

Respectfully submitted,

/s/ Paula Knudsen Burke

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[24] Clinic extern Nyssa Kruse drafted portions of this brief. The Clinic is housed within Cornell Law School and Cornell University. Nothing in this brief should be construed to represent the views of these institutions, if any.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the above Memorandum of Law via the District Court's Electronic Filing System and via electronic mail on September 12 2024, to counsel of record as follows:

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