

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF BROOME

JUSTICE AND UNITY FOR THE SOUTHERN TIER

Plaintiff,

**REPLY AFFIDAVIT**

vs.

**Index No.  
EFCA2022000924**

DAVID HARDER, Broome County Sheriff

Defendant.

MARK SMOLINSKY, being duly sworn, deposes and says:

1. That I am the Jail Administrator for the Broome County Correctional Facility. I am fully familiar with the facts and circumstances and make this Affidavit in reply to the Plaintiff's opposition to the Defendant's motion to modify the preliminary injunction.

2. Based on the visitation formula provided by the State Commission of Corrections, I reviewed the visitation for 2019 and early 2020 prior to the beginning of the COVID-19 pandemic. I used the pre-pandemic period as being a more accurate measure of the number of inmates who received visitation.

3. In that time period approximately fifteen percent of inmates received visits prior to the pandemic. In their September 29, 2022 email, the Director of Operations for the State Commission of Corrections indicated that using pre COVID-19 pandemic visitation numbers would be a good start.

4. The contact visitation area has twenty-six seats available for incarcerated individuals. To arrive at the visitation schedule, I multiplied the total number of incarcerated individuals by fifteen percent. I used that number and multiplied by two hours of visitation for

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each inmate per week and divided that number by the twenty-six available seats to arrive at the total number of visitation sessions required per week.

5. We spread these sessions over three days to address the need to restrict the interaction between housing pods. As previously explained, the Correctional Facility used the formula established by the State Commission of Corrections to determine the necessary visitation schedule. The existing schedule was reviewed by Mr. Moran who advised me that the schedule was approved by them.

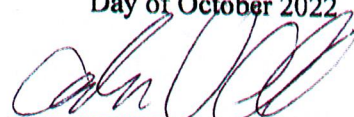
6. To date no person who has requested a visit with an inmate has been denied a visit due to a lack of an available slot. As Mr. Cotter was advised by Mr. Behnke, if the formula required the Correctional Facility to add additional sessions, the Correctional Facility would add sessions.

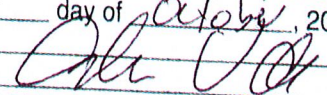
7. Upon information and belief, the Sheriff should be permitted to operate in-person visitation with the requirements established by the State Commission of Corrections and should retain the discretion granted to him under the visitation schedule to alter the or amend the schedule.

WHEREFORE, your Deponent respectfully requests that an Order be entered granting the Defendant's motion to modify the preliminary injunction with costs and disbursements together with such other and further relief as to the Court may seem just and proper.

  
MARK SMOLINSKY

Sworn to before me this  
Day of October 2022

  
Notary Public

State of New York County of Broome County  
Subscribed and Sworn to (or Affirmed) before me  
This 27 day of October, 2022  
by   
ADAM VALLS, Notary Public  
My Commission Expires 03/16/2024  
Notary Number - 01VA6405666

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