No. 22-3171

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ORACIO SANCHEZ JR.,

Plaintiff–Appellant,

v.

ULLI KLEMM, in his official capacity as Religious Service Administrator for the Bureau of Treatment Sercies; TRACY SMITH, in her official capacity as Director of the Bureau of Treatment Services,

Defendants–Appellees.

On Appeal from a Final Judgment of the
United States District Court for the Western District of Pennsylvania
Case No. 2:19-cv-1429, Hon. Robert J. Colville, Hon. Patricia L. Dodge

---

BRIEF FOR APPELLANT URGING REVERSAL AND VOL. I OF THE APPENDIX

Daniel M. Greenfield
Brendan Bernicker
RODERICK & SOLANGE MACARTHUR
JUSTICE CENTER
501 H Street NE, Suite 275
Washington, DC 20002
(202) 869-3434
daniel.greenfield@macarthurjustice.org

Jim Davy
ALL RISE TRIAL & APPELLATE
P.O. Box 15216
Philadelphia, PA 19125
(215) 792-3579
jimdavy@allriselaw.org

Pro bono Counsel for Appellant

Date: Dec. 4, 2023

CORPORATE DISCLOSURE STATEMENT

Appellant is an individual. He has no parent corporation, and no publicly held corporation owns any portion of him.

STATEMENT REGARDING RELATED CASES

To the knowledge of counsel, there are no related cases to this one pending in any forum.

TABLE OF CONTENTS

Page(s)

Corporate Disclosure Statement i

Statement Regarding Related Cases ii

Table of Authorities v

Introduction 1

Jurisdictional Statement 3

Questions Presented 3

Statement of the Case 3

Standard of Review 9

Summary of Argument 10

Argument 11

I. The Prison Litigation Reform Act and the Federal Rules of Civil Procedure specifically authorize reinstatement of a prior suit upon breach of a private settlement agreement, exactly what Mr. Sanchez sought here. 11

A. The PLRA and Federal Rules specifically contemplate *either* a breach of contract suit in state court *or* reinstatement of the action that the parties had settled. 12

1. The PLRA statutory text is clear, and it should resolve this appeal. 12

2. Federal courts discussing this provision, even if in dicta, have acknowledged the textual allowance for reinstatement. 15

B. The District Court misconstrued Mr. Sanchez's specific request for reinstatement of his original action as one for judicial enforcement of his Settlement Agreement with the Defendants. 17

C. Judicial enforcement of a private settlement and reinstatement of an action are very different. 20

1. Reinstatement puts parties back on a litigation posture as if no settlement occurred at all, while judicial enforcement gives effect to parties' settlement language. 20

2. The District Court erred by relying on *Kokkonen*, which addresses judicial enforcement rather than reinstatement. 23

II. This Court could remand for consideration of the fact-bound question of reinstatement in the first instance, but on the current record it could alternatively determine that reinstatement is warranted. 26

TABLE OF CONTENTS—continued

A. Because the District Court's error on jurisdiction stopped it from considering the merits of reinstatement, this Court could remand for the District Court to address reinstatement in the first instance 27

B. Based upon the current record, alternatively, the Court could remand with instructions to reinstate the complaint. 29

Conclusion 33

Certificates 1a

Volume I of the Appendix .....

TABLE OF AUTHORITIES

Page(s)

Cases

Austin v. Hopper,
28 F.Supp.2d 1231 (M.D. Ala. 1998) 16
Benning v. Georgia,
2018 WL 5283446 (S.D. Ga. Oct. 24, 2018) 23
Berda v. CBS Inc.,
881 F.2d 20 (3d Cir. 1989) 28
Blum v. Univ. of Penn.,
602 F.App'x 65 (3d Cir. 2015) 24
Brightwell v. Lehman,
637 F.3d 187 (3d Cir. 2011) 28
Carter v. Albert Einstein Med. Ctr.,
804 F.2d 805 (3d Cir. 1986) 31
City of Albuquerque v. Soto Enterprises, Inc.,
864 F.3d 1089 (10th Cir. 2017) 22
Coltec Indus., Inc. v. Hobgood,
280 F.3d 262 (3d Cir. 2002) 32
Cox v. Horn,
757 F.3d 113 (3d Cir. 2014) 29, 32
Daker v. Comm'r, Georgia Dep't of Corr.,
820 F.3d 1278 (11th Cir. 2016) 12
Disability Law Ctr. v. Massachusetts Dep't of Corr.,
960 F.Supp.2d 271 (D. Mass. 2012) 16, 21
Dominion Dev. Grp., LLC v. Beyerlein,
No. 17-3391 (3d Cir. May 24, 2019) 25
Estate of Smith v. Marasco,
318 F.3d 497 (3d Cir. 2003) 28
Gaddis v. Campbell,
301 F.Supp.2d 1310 (M.D. Ala. 2004) 16, 21
Gold Kist, Inc. v. Laurinburg Oil Co.,
756 F.2d 14 (3d Cir. 1985) 32, 33
Golden Gate National Senior Care, LLC v. Minich ex rel. Estate of Shaffer,
629 F.App'x 348 (3d Cir. 2015) 27
Hall v. Cmty. Mental Health Ctr.,
772 F.2d 42 (3d Cir. 1985) 32
Hazelton v. Wrenn,
2013 WL 1953354 (D.N.H. Apr. 10, 2013), *report and recommendation approved*,
2013 WL 1953517 (D.N.H. May 9, 2013) 23
In re Nat'l Collegiate Student Loan Trusts 2003-1, 2004-1, 2004-2, 2005-1, 2005-2, 2005-3,
971 F.3d 433 (3d Cir. 2020) 28

TABLE OF AUTHORITIES—continued

Page(s)

In re Nazi Era Cases Against German Defendants Litigation,
213 F.Supp.2d 439 (D.N.J. 2002) 20, 29
Ingles v. Toro,
438 F.Supp.2d 203 (S.D.N.Y. 2006) 15, 17
Kokkonen v. Guardian Life Insurance Co. of America,
511 U.S. 375 (1994) 9, 23, 24
Miles v. Anton,
42 F.4th 777 (7th Cir. 2022) 14
Miller v. French,
530 U.S. 327 (2000) 21
Moolenaar v. Gov't of the Virgin Islands,
822 F.2d 1342 (3d Cir. 1987) 31, 33
Plains All Am. Pipeline L.P. v. Cook,
866 F.3d 534 (3d Cir. 2017) 28
Rowe v. Jones,
483 F.3d 791 (11th Cir. 2007) 15
Ruiz v. Estelle,
161 F.3d 814 (5th Cir. 1998) 15
Sawka v. Healtheast, Inc.,
989 F.2d 138 (3d Cir. 1993) 29
Shaffer v. GTE North, Inc.,
284 F.3d 500 (3d Cir. 2002) 19, 24
Shears v. Mooney,
No. 2:18-cv-602 (W.D. Pa. Oct. 24, 2022) 16, 17
Singleton v. Wulff,
428 U.S. 106 (1976) 28
State Nat'l Ins. Co. v. Cnty. of Camden,
824 F.3d 399 (3d Cir. 2016) 25
United States v. Andrews,
12 F.4th 255 (3d Cir. 2021) 30
William A. Graham Co. v. Haughey,
568 F.3d 425 (3d Cir. 2009) 28

Statutes

18 U.S.C. § 3626 13
18 U.S.C. § 3626(a)(1)(A) 21
18 U.S.C. § 3626(c)(1) 13
18 U.S.C. § 3626(c)(2) 13, 16
18 U.S.C. § 3626(c)(2)(A) 13, 14, 17, 18
18 U.S.C. § 3626(c)(2)(B) 13
18 U.S.C. § 3626(g)(6) 14, 17
28 U.S.C. § 1291 3

TABLE OF AUTHORITIES—continued

Page(s)

28 U.S.C. § 1331 3
42 U.S.C. § 1983 3
42 U.S.C. § 2000cc 4

Other Authorities

141 Cong. Rec. 13,319 (1995) 21
141 Cong. Rec. 14,418 (1995) 21
Antonin Scalia & Bryan A. Garner, Reading Law (2012) 31
Henry J. Friendly, Mr. Justice Frankfurter and the Reading of Statutes, in Benchmarks 196 (1967) 12
Oxford English Dictionary, "Reinstatement," meaning 1.a., (July 2023) 14

Rules

Fed. R. Civ. P. 60(b) 10, 28, 29, 30, 31

INTRODUCTION

Mr. Oracio Sanchez is a devout Hebrew Israelite. Like Christianity, the Hebrew Israelite faith shares some features with Judaism, but Judaism and the Hebrew Israelite faiths are very different religions. For example, like Christians but *unlike* mainstream Jews, Hebrew Israelites believe in the Biblical New Testament, including that Jesus ("Yahshua" in Hebrew) is the son of God ("Yahweh") and was sent to die for the sins of humans in fulfillment of Messianic prophecies. *E.g.* JA 27. In light of these and other differences, mainstream Judaism does not recognize Hebrew Israelites as Jewish, and Hebrew Israelites do not identify as mainstream Jews.

So when SCI Fayette attempted to combine the Passover ceremonial meal for Hebrew Israelites and mainstream Jews—even though they practice fully separate faiths and do not even partake of their ceremonial meals on the same day—Mr. Sanchez sued. He and the Pennsylvania Department of Corrections ("DOC") ultimately resolved the suit via a private settlement agreement that specified that the Hebrew Israelites would be able to worship in the manner required by their religion, at least after the DOC's future relaxation of COVID-19 restrictions that made doing so in 2021 impossible. All was well—or so Mr. Sanchez thought.

When, in 2022, Mr. Sanchez sought to have SCI Fayette hold the Hebrew Israelite ceremonial meal in accordance with the settlement agreement, staff informed him that they would do no such thing. Not only would the Hebrew Israelites be limited to participating in the ceremonial meal with mainstream Jews, but SCI Fayette would

hold the feast on the date of Jewish, rather than Hebrew Israelite, Passover. In other words, Mr. Sanchez and his fellow Hebrew Israelites were not allowed to observe Passover on the date, or in the manner, required by their religion.

When Mr. Sanchez and his fellow incarcerated Hebrew Israelites were unsuccessful in their efforts to obtain compliance with the terms of the settlement, Mr. Sanchez sought to reinstate his original claims in the District Court. But without Appellees calling jurisdiction into question, the District Court ruled that it lacked subject matter jurisdiction even to consider the reinstatement motion on the merits—an error of law. Because the Prison Litigation Reform Act expressly allows reinstatement under these circumstances, this Court should reverse.

JURISDICTIONAL STATEMENT

The question of the District's Court jurisdiction goes to the heart of this case. *See* Argument, Section I. The District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as the complaint that Mr. Sanchez sought to reinstate alleged claims pursuant to 42 U.S.C. § 1983. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1292, because Mr. Sanchez timely appealed from a final order of the District Court. JA 1-3.

QUESTIONS PRESENTED

> When a prisoner civil rights case over which the federal courts have jurisdiction is resolved by a private settlement agreement, one party breaches the settlement agreement, and the other party moves to reinstate the case in accordance with the PLRA, do the federal courts retain jurisdiction over the underlying case?
>
> Proposed answer: **Yes**
>
> Should this case be remanded for the district court to address, in the first instance, whether there was a breach of the settlement agreement?
>
> Proposed answer: **Yes**

STATEMENT OF THE CASE

In 2019, Mr. Sanchez sued Ulli Klemm, the Religious Services Administrator at SCI Fayette, and Tracy Smith, the Director of Treatment Services for the Pennsylvania Department of Corrections, because they had refused to allow Mr. Sanchez and other Hebrew Israelites incarcerated at Fayette to observe Passover as required by their faith. JA 26. As Mr. Sanchez alleged and explained in his *pro se* complaint, Mr. Klemm and Ms. Smith had restricted who could observe Passover at Fayette—including who could partake of the ceremonial Passover meal—by

excluding Hebrew Israelites and including only mainstream Jewish prisoners. JA 24. They did this despite acknowledging that Hebrew Israelites did, in fact, observe Passover as part of their faith. JA 24. This had enormous significance to the Hebrew Israelites—after discussing the historical basis of the Hebrew Israelite faith and citing three different Bible verses, Mr. Sanchez's complaint explained that "WE MUST OBSERVE PASSOVER" because, "if we do not, Scripture says that we will be cut off from the Nation of Israel." JA 27. For the Hebrew Israelites, the stakes were (and are) extraordinarily high.

Despite these stakes, and despite multiple rounds of administrative grievances, the facility refused to allow the Hebrew Israelites to hold a communal Passover meal—instead providing them with individual meal bags at their own cells. JA 31. This diminished their required observance of the holiday—a communal religious event that the Defendants allowed mainstream Jewish prisoners, by contrast, to observe together. JA 30-31. Ultimately, Mr. Sanchez alleged that the foregoing amounted to straightforward violations of his rights under the Fourteenth Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq*. JA 33.

After Mr. Sanchez filed his complaint, the Parties engaged in several months of discovery. JA 14-16. The Parties contemplated filing competing motions for summary judgment but, in September 2020, perhaps recognizing the merit of Mr. Sanchez's position, the Defendants filed a consent motion to stay the proceedings in anticipation of a possible settlement agreement. JA 16-17. The Parties in fact reached a Settlement Agreement in December 2020, and the Parties filed a joint stipulation of

dismissal pursuant to that Settlement Agreement. JA 17. The Court granted it and closed the case. JA 17.

The Settlement Agreement was straightforward. Paragraph three of the Agreement stipulated that Mr. Sanchez and the other Hebrew Israelites would be allowed to observe Passover as required by their faith with a communal ceremonial meal. JA 166. The Parties specifically agreed that the Hebrew Israelites' ceremonial meal would take place separately from the mainstream Jewish Passover meal. JA 166; JA 98. The meal, however, would take place subject to the DOC's COVID-19 and safety protocols applicable to communal gatherings. JA 166; JA 98. So, under the circumstances, the agreement specifically noted the Parties' understanding that COVID-19 conditions would not permit a communal Passover meal for the Hebrew Israelites in 2021. JA 166; JA 98-99. And indeed, in 2021, when the DOC held no communal Passover meal for the Hebrew Israelites, Mr. Sanchez did not detect anything amiss with Defendants' adherence to the Settlement Agreement because COVID-19 protocols still prevented *any* communal celebrations.

When the time came to celebrate Passover in 2022, however, Mr. Sanchez realized that Defendants had no intention of abiding by the Settlement Agreement. When Mr. Sanchez and fellow Hebrew Israelites reached out about scheduling and details for the Hebrew Israelites' Passover ceremonial meal, staff at the facility informed him that the Hebrew Israelites and mainstream Jews would celebrate together, in a way that both contravened the requirements of the Hebrew Israelite faith, JA 100, and expressly contradicted the terms of the agreement. JA 166; JA 98. Mr. Sanchez and other incarcerated people took numerous steps to try to enforce the Settlement

Agreement, including explaining the existence and terms of the Agreement and the specific religious reasons that the Hebrew Israelites calculated the date for the Passover celebration differently than mainstream Jews—the Hebrew Israelites would celebrate according to their calendar on April 15th, 2022, while the mainstream Jewish prisoners would celebrate according to their calendar on April 16, 2022. JA 99-100. Staff at the facility rebuffed this entirely, explaining in identical language to multiple Hebrew Israelites who filed grievances that "[w]e're simply following the direction put out by the central office" of the DOC, i.e., the Defendants who had entered into the Settlement Agreement. JA 115; JA 117.

Having exhausted every internal avenue he could think of, in August 2022, Mr. Sanchez, still *pro se*, filed a motion to reinstate the civil proceedings that he had previously dismissed pursuant to the settlement agreement. That motion was explicitly captioned "MOTION TO REINSTATE CIVIL PROCEEDINGS." JA 97. It did not ask the Court to enforce the Settlement Agreement, such as by ordering specific performance or damages for the breach, or otherwise treat the Settlement Agreement as a consent decree enforceable by contempt sanctions. *See generally* JA 97-105. Instead, Mr. Sanchez explained that the Defendants had breached the Settlement Agreement and cited the relevant statutory provision of the Prison Litigation Reform Act—18 U.S.C. § 3626—that allows and provides for reinstatement of civil actions dismissed pursuant to private settlement agreements when those agreements have been breached. JA 102. In support of the motion, Mr. Sanchez filed nearly a dozen exhibits, including affidavits from other incarcerated people and records of the administrative grievances he and others had filed seeking Passover

feast celebrations in accordance with the terms of the Settlement. *See* JA 108-138. He also picked up where he'd left off prior to settlement—making substantive arguments about why Defendants' conduct amounted to a constitutional and statutory violation. JA 102-104.

Defendants opposed Mr. Sanchez's motion to reinstate proceedings on the merits—that is to say, they opposed reinstatement by arguing that that they had not actually breached the Settlement Agreement at all. JA 140-43. They disputed Mr. Sanchez's account of the facts of what happened at SCI Fayette during Passover in 2022, and argued that their settlement commitment to permit the Hebrew Israelites to "observe the Passover holiday with a communal meal separately from the mainstream Jewish population" was satisfied when they permitted the Hebrew Israelites to have a communal meal according to *Jewish* traditions on the date of the *Jewish*, rather than Hebrew Israelite, Passover. JA 140-43. In Defendants' view, despite the plain language of the Settlement Agreement and the manifest and important differences in both substantive beliefs and ceremonial practices between Hebrew Israelites and mainstream Jews, the limited number of incarcerated people participating in either the Hebrew Israelites' or mainstream Jews' celebration justified prohibiting Hebrew Israelites from observing Passover according to the tenets of their faith and forcing them to choose between celebrating Jewish Passover or not celebrating at all. JA 142.

Those justifications did not substantially rebut Mr. Sanchez's assertions about settlement compliance, or even stand on their own terms. For one thing, the explanation about ceremony size offered in litigation differed from the explanation

that various staff members had given Mr. Sanchez and others about the reason they would not hold the Hebrew Israelites' feast separately as per the terms of the Settlement. *See, e.g.*, JA 115; 117. For another, Defendants' assertion that communal religious celebrations have a minimum requirement of more than 4 participants, JA 142, has no support that appears anywhere in the text of the exhibit they attached to their Opposition to the Motion to Reinstate, an internal memo about the Jewish Holiday Celebration for 2022. JA 146-152. That document did not specify a minimum attendee count to hold the celebration or otherwise justify Defendants' decision to deny Mr. Sanchez and his fellow Hebrew Israelites the communal meal their religion, and the Settlement Agreement, requires. *See* JA 146-152. But beyond that, even taking it at face value, Mr. Sanchez and his fellow Hebrew Israelites apparently clear that arbitrary, outside-of-policy bar regardless. *See* JA 99-101 (referring to or listing, not comprehensively, SCI Fayette Hebrew Israelites Mr. Sanchez, Randy Carter, Michael Farris, Ian Robinson, and Julian Bryant); *see also* JA 116-118. In any event, every argument that Defendants made addressed whether they had breached the Settlement Agreement and whether reinstating proceedings would be justified on that basis. They never denied that the District Court could, and indeed had to, decide whether there had been a breach.

Instead of reinstating the case, or even ruling on whether there had been a breach, however, the Magistrate Judge treated Mr. Sanchez's "motion to reinstate civil proceedings" as one that sought enforcement of the Settlement Agreement—citing to an inapposite Supreme Court case which held that a district court generally "lacks jurisdiction to enforce the terms of a settlement agreement." JA 10 (citing *Kokkonen*

v. Guardian Life Insurance Co. of America, 511 U.S. 375 (1994)). The Magistrate Judge also cited approvingly to two unpublished, out-of-circuit district court decisions that rejected similar requests. Ultimately, the Magistrate Judge concluded that the Court lacked subject matter jurisdiction to even consider Mr. Sanchez's request to reinstate his case, and advised him that his sole remedy would be to file a breach of contract suit in state court. JA 10-11. Accordingly, the Magistrate Judge recommended that the District Court deny the motion. JA 11. Over Mr. Sanchez's objections, JA 156, the District Court adopted that recommendation. JA 4.

Mr. Sanchez timely appealed to this Court. JA 1-3. Because he remained *pro se*, this Court screened his appeal for summary affirmance under its local rules. Instead of summarily affirming, the Court appointed undersigned *pro bono* counsel to represent Mr. Sanchez on appeal.

STANDARD OF REVIEW

"Every federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review.'" *Farina v. Nokia, Inc.*, 625 F.3d 97, 109 (3d Cir. 2010) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986)). This Court "review[s] *de novo* the District Court's determination of jurisdiction." *Wayne Land & Mineral Grp., LLC v. Del. River Basin Comm'n*, 894 F.3d 509, 522 (3d Cir. 2017). This Court reviews factual findings about jurisdiction for clear error, *Pennzoil Prods. Co. v. Colelli Assocs., Inc.*, 149 F.3d 197, 200 (3d Cir. 1998), but where the determination turns solely on an interpretation

of law, this Court's review is entirely *de novo*. *Emerald Investors v. Gaunt*, 492 F.3d 192, 197 (3d Cir. 2007).

SUMMARY OF ARGUMENT

The District Court erred by declining to consider the merits of Mr. Sanchez' motion for reinstatement because the Prison Litigation Reform Act ("PLRA") and the Federal Rules of Civil Procedure specifically authorize reinstatement of an underlying civil case in response to breach of a private settlement of a civil rights action. The District Court treated Mr. Sanchez's motion as one seeking judicial enforcement of the terms of the settlement agreement, but he asked for no such thing—reinstatement involves the parties returning to the battlefield, and picking up the litigation where they left off. Subsequent proceedings disregard the prior settlement agreement; they do not enforce it. And while Mr. Sanchez could have filed a breach of contract action in state court, the PLRA also specifically allowed him the option to reinstate his case in federal court. This Court should explicitly recognize that district courts have jurisdiction to entertain such a request for reinstatement on the merits.

Relief in the form of reinstatement necessitates an intensely fact-bound inquiry, one that the District Court did not undertake here. As this Court regularly does in such circumstances, it could remand with instructions for the District Court to conduct that analysis in the first instance. However, the Court could also remand with instructions to reinstate directly, because the evidence Mr. Sanchez submitted demonstrates that reinstatement is warranted in this case. Motions for reinstatement, akin to a motion for relief pursuant to Fed. R. Civ. P. 60(b), require

showing exactly the sorts of things that Mr. Sanchez explained in his motion—that he sought reinstatement shortly after he learned of the breach, and that he could not have known of the breach sooner; that perhaps the Defendants had never intended to fulfill the terms of the settlement agreement; and that because Defendants continue the underlying alleged violation to this day and the facts have barely changed, Defendants will suffer little prejudice by turning back to litigating the merits.

ARGUMENT

I. The Prison Litigation Reform Act and the Federal Rules of Civil Procedure specifically authorize reinstatement of a prior suit upon breach of a private settlement agreement, exactly what Mr. Sanchez sought here.

The District Court erred in its *sua sponte* rejection of jurisdiction to reinstate Mr. Sanchez's case. The court's mistaken conclusion that it lacked jurisdiction rested on three errors. First, the District Court failed to recognize reinstatement as a valid procedural recourse for breaches of a private settlement agreement. Second, and relatedly, the District Court failed to take Mr. Sanchez's request for reinstatement at face value, misconstruing it as one seeking enforcement of the breached agreement rather than seeking reinstatement of the underlying case. But Mr. Sanchez requested exactly the recourse contemplated and authorized by the Prison Litigation Reform Act and Federal Rules of Civil Procedure and explicitly phrased his request to comply with those rules. Third, reinstatement and enforcement differ in both substance and procedure, particularly within the PLRA statutory context, and Mr. Sanchez requested reinstatement, not enforcement.

A. The PLRA and Federal Rules specifically contemplate *either* a breach of contract suit in state court *or* reinstatement of the action that the parties had settled.

The District Court erred in part because it treated a state court breach of contract action as the only permissible remedy for the breach of a private settlement agreement. This is incorrect as a straightforward matter of statutory interpretation, which should suffice to resolve this appeal. Pursuant to both the PLRA and Federal Rules, an incarcerated litigant who suffers a breach of a settlement agreement may either seek to reinstate the existing action in federal court or may file a state court breach of contract action. District Courts have also repeatedly recognized this, including most frequently in the context of opinions approving and making statutorily-required findings for certain types of settlements subject to the PLRA. Indeed, the Magistrate Judge who wrote the opinion at issue in this case specifically recognized the availability of reinstatement in a different case after writing the Report & Recommendation on appeal here.

1. The PLRA statutory text is clear, and it should resolve this appeal.

As a matter of text, the Prison Litigation Reform Act specifically authorizes reinstatement of an action upon breach of a private settlement agreement. And we look to that text first. "For this and any other question of statutory interpretation," this Court should follow "Justice Frankfurter's three-part test: '(1) Read the statute; (2) read the statute; (3) read the statute!'" *Daker v. Comm'r, Georgia Dep't of Corr.*, 820 F.3d 1278, 1283 (11th Cir. 2016) (quoting Henry J. Friendly, Mr. Justice Frankfurter and the Reading of Statutes, in Benchmarks 196, 202 (1967)). While

Daker interpreted the three-strikes provision of the PLRA, the provision of the PLRA at issue here is 18 U.S.C. § 3626, "Appropriate remedies with respect to prison conditions." As relevant here, it addresses "SETTLEMENTS" of prison civil rights actions, including cases resolved via "consent decrees," *id.* at § 3626(c)(1), and cases resolved via "private settlement agreements," *id.* at § 3626(c)(2). For private settlement agreements, there are two subsections that explain the two possible remedies when an agreement is breached. The first subsection, § 3626(c)(2)(A), explains that "reinstatement" is one such possible remedy, and notes that private settlements need not comply with the other strict requirements that the PLRA imposes on consent decrees "if the terms of that agreement are not subject to court enforcement *other than the reinstatement of the civil proceeding that the agreement settled*." *Id.* (emphasis added). The second subsection, § 3626(c)(2)(B), authorizes the second possible remedy for a breach, noting that a party claiming breach of a private settlement may "seek[] in State court any remedy available under State law," such as through a breach of contract action. *Id.*

These provisions, taken together, establish the two ways that parties to lawsuits filed by state prisoners can settle cases: 1) via a consent decree, which is subject to the court finding that any prospective relief is narrowly drawn, necessary to correct the alleged violation, and the least intrusive means of doing so, *see* § 3626(c)(1); or 2) via a private settlement agreement, which does not require the court to make need, narrowness, and intrusiveness findings. If the parties choose the first approach, the court can enforce the agreed-upon terms, *see* § 3626(c)(1). If they choose the second

approach, the court cannot enforce the agreed-upon terms but is expressly authorized to "reinstate[] . . . the civil proceeding that the agreement settled." § 3626(c)(2)(A).

The "DEFINITIONS" section of this same statute bolsters this reading of the text and emphasizes the availability of reinstatement as a remedy for breaches of private settlement agreements in prison civil rights cases. The definitions section echoes the operative provision, specifically defining the term "private settlement agreement" to mean "an agreement entered into among the parties that is not subject to judicial enforcement *other than the reinstatement of the civil proceeding that the agreement settled*." *Id*. at § 3626(g)(6) (emphasis added). And reinstatement means exactly what it suggests on its face. The Oxford English Dictionary has consistently defined "reinstatement" since 1662, including at the time of the passage of the PLRA and during its subsequent implementation, as having a first and primary meaning of "[t]he action of reinstalling or re-establishing a person or thing in a former position or condition." Oxford English Dictionary, "Reinstatement," meaning 1.a., (July 2023). That thing, here, is the underlying complaint. This should be enough to resolve the issue of whether Mr. Sanchez may seek to reinstate his case upon breach of a private settlement agreement. Where the text is clear, this Court need not go further. "If textualism is for anyone, it must be for everyone, including those who are incarcerated." *Miles v. Anton*, 42 F.4th 777, 782 (7th Cir. 2022).

2. Federal courts discussing this provision, even if in dicta, have acknowledged the textual allowance for reinstatement.

If the text were not clear enough on its face, numerous federal courts have confirmed that the PLRA's statutory text authorizes reinstatement of an action as a remedy for breach of a private settlement agreement. That includes this Court's sister Circuits; the Fifth Circuit, for example, has noted that the PLRA "specifically reflects the intention [of Congress] to distinguish between private settlement agreements which are subject to judicial enforcement and those which are not (except by reinstatement of the thereby settled proceedings)." *Ruiz v. Estelle*, 161 F.3d 814, 825 (5th Cir. 1998). And the Eleventh Circuit has explained that, "[u]nder the PLRA, the only remedies for a breach of a private settlement agreement are 'the reinstatement of the civil proceeding that the agreement settled' or a state law claim." *Rowe v. Jones*, 483 F.3d 791, 796 (11th Cir. 2007).

District courts approving (or rejecting) settlement agreements before dismissal of an action have also discussed the prospect of reinstating cases if the agreements are breached. One court, for example, specifically discussed the availability *only* of reinstatement—as in, without the availability of judicial enforcement—as a reason that prisoner plaintiffs might "be reluctant to enter into a 'private settlement agreement." *Ingles v. Toro*, 438 F.Supp.2d 203, 215 (S.D.N.Y. 2006). The *Toro* Court observed that the text of "the PLRA limits the means by which they may enforce such an agreement," and that prisoner plaintiffs who reach private settlement agreements "may return to federal court only to seek reinstatement of the action—in essence, to rescind the agreement and to proceed to trial." *Id*. Other district courts similarly

discuss reinstatement of prison civil rights cases in the context of approving settlement agreements, and they often note the availability of reinstatement in the event of a breached private settlement of a prison civil rights action. *E.g. Austin v. Hopper*, 28 F.Supp.2d 1231, 1235 (M.D. Ala. 1998) ("private settlement agreements are not subject to the above restrictions if the terms of such an agreement are not subject to court enforcement other than the reinstatement of the civil proceeding"); *Gaddis v. Campbell*, 301 F.Supp.2d 1310, 1314 (M.D. Ala. 2004) ("The proposed agreement contemplates enforcement through the mechanisms permitted by the PLRA: reinstatement of the action and state-court relief."); *Disability Law Ctr. v. Massachusetts Dep't of Corr.*, 960 F.Supp.2d 271, 284 (D. Mass. 2012) (discussing "the PLRA's provision for the enforcement of private settlement agreements through 'reinstatement of the civil proceeding that the agreement settled; or through an action in state court by a party claiming that the agreement has been breached" (quoting 18 U.S.C. § 3626(c)(2))). Put another way, courts acknowledge the availability of reinstatement in the event of a breach of a private settlement agreement, often specifically in contrast to judicial enforcement.

Indeed, even the Middle District of Pennsylvania seems to have belatedly recognized this. In a case that post-dated the R&R and order on appeal in this case, the same Magistrate Judge who wrote that R&R cited *Ingles* with approval in explaining that, when incarcerated litigants subject to the PLRA reach private settlement agreements, those "agreements are not subject to the district court's enforcement 'other than reinstatement of the civil proceeding that the agreement settled.'" *Shears v. Mooney*, No. 2:18-cv-602, *5 (W.D. Pa. Oct. 24, 2022) (Dodge, J.)

(quoting 18 U.S.C. § 3626(c)(2)(A) and citing *id.* at § 3626(g)(6) and *Ingles*, 438 F.Supp.2d at 214-15). There, the Parties had come back to court seeking, explicitly, enforcement of a private settlement agreement. They justified this based upon having reached a private settlement agreement that purported to have the Court "retain jurisdiction to enforce a dispute"—which the Court called an attempt to "simply contract around" the need-narrowness-intrusiveness requirements relevant to consent decrees. *Shears*, No. 2:18-cv-602 at *6. In declining to enforce the agreement in violation of the PLRA, however, the *Shears* Court recognized the availability of reinstatement, explaining that "[u]nder the PLRA, the only remedy available to a party when seeking enforcement of a private injunctive settlement agreement (*apart from the reinstatement of the civil proceeding that the agreement settled*) is a breach of contract suit in state court." *Shears*, No. 2:18-cv-602 at *6 (emphasis added). That is, in *Shears*, the Court treated the availability of reinstatement and the structure of § 3626 as a reason not to engage in improper judicial enforcement. *Shears* was quite right, for the same reasons that the District Court erred in this case.

B. The District Court misconstrued Mr. Sanchez's specific request for reinstatement of his original action as one for judicial enforcement of his Settlement Agreement with the Defendants.

The District Court's error in failing to acknowledge the availability of reinstatement pursuant to the PLRA contributed to its second big error. Although Mr. Sanchez specifically sought reinstatement as allowed by the statute, the District Court construed his request as one seeking prohibited judicial enforcement of his private Settlement Agreement with Defendants and the DOC. *See* JA 10 (discussing

lack of jurisdiction to enforce terms of a settlement agreement). But, in addition to the explicit text of his motion, every available contextual indicator further demonstrates that Mr. Sanchez sought reinstatement rather than judicial enforcement.

First, the text of Mr. Sanchez's motion makes abundantly clear that he sought reinstatement rather than judicial enforcement:

- Mr. Sanchez titled his filing "MOTION TO REISTATE CIVIL PROCEEDINGS." JA 97.
- He cited the exact subsection of the PLRA discussed in Section I.a., 18 U.S.C. § 3626(c)(2)(A), which authorizes reinstatement, explaining that private settlements of prison civil rights actions under the PLRA are "not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled." 18 U.S.C. § 3626(c)(2)(A); *see* JA 97 (citing that provision).
- In the portion of the filing that he subtitled "Memorandum of Law in Support of Motion to Reinstate Civil Proceedings," Mr. Sanchez explained the difference between consent decrees and private settlement agreements under the terms of the PLRA. He acknowledged that "the settlement agreement is not subject to judicial enforcement." JA 102. Instead, he sought reinstatement because, as he correctly recognized, "the only remedy available" in federal court on the underlying docket "is to reinstate the civil proceedings" JA 102-103.

The District Court's disavowal of jurisdiction depends upon the Court treating Mr. Sanchez's request as one for enforcement rather than reinstatement, and ignores all of these explicit indicia that Mr. Sanchez sought reinstatement under the Court's existing jurisdiction, rather than enforcement that would require a new "basis for jurisdiction." *Shaffer v. GTE North, Inc.*, 284 F.3d 500, 504 (3d Cir. 2002).

Second, beyond the text, contextual factors only confirm that Mr. Sanchez sought reinstatement rather than judicial enforcement. For one thing, the Defendants never even sought denial of Mr. Sanchez's motion to reinstate on the basis that the Court categorically lacked jurisdiction to do that; the Court raised (and rejected) jurisdiction *sua sponte*. JA 8-9. If Defendants had shared the Court's incorrect sense that privately-settled PLRA actions could not be reinstated upon breach, they assuredly would have argued that themselves. For another thing, in asking the Court to reinstate his complaint, Mr. Sanchez not only explained how Appellees breached the settlement agreement, JA 99-102, but he returned to the merits of his underlying case. JA 103-105. This evinced his hope for continuation of an underlying suit that differs from judicial enforcement and is allowed under the PLRA. Mr. Sanchez did not expect the Court to enforce his existing settlement agreement; he fully expected—and expects—to have to win his case on the merits. Finally, because Mr. Sanchez did not get even partial compliance with the Settlement Agreement from Defendants, no context suggests he might be reluctant to unwind the settlement and proceed back to reinstated litigation. Some courts have discouraged parties from reinstating litigation where they have gotten at least some of the benefit of their bargain—risking it all might be worse for them, on balance, than imperfect adherence to an agreement.

See In re Nazi Era Cases Against German Defendants Litigation, 213 F.Supp.2d 439, 452 (D.N.J. 2002) ("Before moving for [reinstatement], the Court would urge the Plaintiffs to . . . question whether it is desirable to abandon the arguably flawed but functioning foundation in favor of highly uncertain litigation."). Where, as here, Defendants have not complied at all, Mr. Sanchez has nothing to lose by returning to litigate.

C. Judicial enforcement of a private settlement and reinstatement of an action are very different.

The District Court's failure to acknowledge the availability of reinstatement and its mischaracterization of Mr. Sanchez's request contributed to the District Court's third key error that fatally undermines its analysis. Judicial enforcement and reinstatement are extremely different, reflecting the purposes of the PLRA and litigation practice. So, when the District Court relied upon the Supreme Court's decision in *Kokkonen*—a decision explicitly about enforcement, rather than reinstatement—that reliance was particularly misplaced and ensured it would reach the wrong result.

1. Reinstatement puts parties back on a litigation posture as if no settlement occurred at all, while judicial enforcement gives effect to parties' settlement language.

Private settlements offer some clear tradeoffs for state prisoner civil rights plaintiffs, especially when compared to the other primary way that a prison civil rights case can resolve by agreement of the parties—i.e., in a consent decree. Private settlements fall outside of the strict requirements of the PLRA. Those requirements,

which apply to consent decrees, include the aforementioned need for a Court to make on-the-record findings that any settlement that includes prospective relief "is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1)(A). Parties who want to settle a case without a judicial finding of a constitutional violation to which the relief is appropriately tailored can settle the case before any such findings need to be made, but only at a cost. "The expense of their trade-off is relinquishment of their right to obtain a court order that is enforceable in federal court." *Gaddis*, 301 F.Supp.2d at 1314. Consent decrees, where federal courts retain jurisdiction to oversee enforcement, generally allow a plaintiff "to obtain a future order that is enforceable by contempt," but again, "subject to the narrow tailoring requirements of § 3626(a)(1)(A)." *Disability Law Ctr.*, 960 F.Supp.2d at 285.

Against the backdrop of those differences, the reason that the PLRA allows for reinstatement rather than enforcement comes into clearer focus. Congress passed the PLRA's prospective relief requirements to limit the federal judiciary's involvement in prison management. *E.g.* 141 Cong. Rec. 13,319 (1995) (statement of Sen. Abraham); *id.* at 14,418 (statement of Sen. Hatch); *see also Miller v. French*, 530 U.S. 327, 333 (2000) (discussing context). Where no constitutional violation has yet been proven, the PLRA does not permit federal courts to interfere with prison management; but it also does not prohibit prison officials from deciding, including through an agreement with the plaintiff(s), to make changes to their own policies or practices, whether or not those changes remedy a constitutional violation. A private settlement agreement

respects the prison officials' authority to manage the prison, including by doing so in a manner agreed upon with plaintiffs. This is fundamentally different from a consent decree because, unlike a consent decree, a private settlement can never result in a federal court managing the affairs of the prison.

If either party breaches its obligations under the private settlement agreement, the party seeking reinstatement of the original case is in no way trying to enforce the agreement. They ask instead for the opposite: that the agreement be completely disregarded so that the case proceeds exactly as it would have if the agreement had never been reached in the first place. The court's subject matter jurisdiction over the original action is not, and indeed cannot have been, altered by the private agreement between the parties. *Cf. City of Albuquerque v. Soto Enterprises, Inc.*, 864 F.3d 1089, 1093 (10th Cir. 2017) ("two of subject-matter jurisdiction's core characteristics [are] (1) that only Congress can create or destroy subject-matter jurisdiction and (2) that a party's litigation conduct can't affect subject-matter jurisdiction."). So the question of whether to reinstate cannot be one of jurisdiction: the court's authority to decide whether a federally-protected right has been violated and, if so, to order appropriate relief is the same after the failed settlement as before. This is why the PLRA draws a sharp distinction between private settlement agreements, which do not impose any federally-enforceable obligations on prison officials (thereby involving federal courts in prison management), and consent decrees, which do create such obligations.

2. The District Court erred by relying on *Kokkonen*, which addresses judicial enforcement rather than reinstatement.

Given these differences, the District Court erred by relying on the Supreme Court's decision in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994) to dismiss Mr. Sanchez's motion. *See* JA 10 (citing *Kokkonen*). *Kokkonen* dealt with "a motion to enforce the agreement," *Kokkonen*, 511 U.S. at 375, that the parties there had reached to settle their claims, and did not deal with reinstatement at all. *Kokkonen* does not apply to this case, as subsequent decisions of this Court make quite clear. The District Court's purported extension of *Kokkonen* to deny this motion is wrong, and it contributed to the Court's ultimate error in denying the motion for reinstatement.[1]

First, *Kokkonen* itself does not apply to reinstatement. Quite the opposite, in fact—while explaining why courts could not enforce settlement agreements without a basis for jurisdiction, it distinguished judicial enforcement of a settlement agreement from reinstatement of the underlying case. "It must be emphasized that what respondent seeks in this case is enforcement of the settlement agreement, and *not merely reopening of the dismissed suit by reason of breach of the agreement that*

---

[1] The District Court also cited to two short, unpublished, out-of-circuit district court decisions purporting to extend *Kokkonen* in the same way. *See* JA 10 (citing *Benning v. Georgia*, 2018 WL 5283446, at *2 (S.D. Ga. Oct. 24, 2018), and *Hazelton v. Wrenn*, 2013 WL 1953354, at *2 (D.N.H. Apr. 10, 2013), *report and recommendation approved*, 2013 WL 1953517 (D.N.H. May 9, 2013)). Those decisions and the opinion on appeal here all use strikingly similar language, and *Benning* and the opinion on appeal merely adopt *Hazleton*'s analysis, which is wrong for the reasons already given. *Benning* and *Hazelton* are, in any event, not binding on this Court.

was the basis for dismissal." *Id*. at 378 (emphasis added); *see also Blum v. Univ. of Penn.*, 602 F.App'x 65, 69 n.1 (3d Cir. 2015) (quoting and discussing *Kokkonen* and holding jurisdiction available for consideration of motion to reinstate complaint because it did not seek enforcement). But "enforcement of the settlement agreement . . . is more than just a continuation of the dismissed suit, and hence requires its own basis for jurisdiction." *Id*. This distinction between "enforcement" and "continuation of the dismissed suit" makes sense. *Kokkonen* involved a breach of contract dispute between citizens of the same state. There was no federal jurisdiction to enforce the contract terms because, even though the contract was a settlement agreement that had disposed of a federal case, the breach of contract action did not present a federal question and there was no diversity of citizenship. *Kokkonen* held that the mere fact that the settlement had resolved a federal case did not create federal jurisdiction to enforce the settlements terms (whereas, had those same terms been part of an order in the original action, the court would have had the inherent authority to enforce its order). *Kokkonen* did not, as the District Court here believed, hold that a settlement agreement destroys existing federal subject matter jurisdiction when a party seeks "continuation of the dismissed suit," as Mr. Sanchez does here.

This Court's own precedents that followed *Kokkonen* repeatedly confirm this understanding. In one case where a party sought enforcement, this Court explained that "reinstatement of an action, which revives the underlying claim and sends the litigants back to the original battlefield, is totally different from the enforcement of the terms of a settlement agreement because one of the parties has not complied with those terms." *Shaffer*, 284 F.3d at 503. Reinstatement could be allowed for good cause,

including a breached settlement, while judicial enforcement would require "its own basis for jurisdiction." *Id.* at 503, 504. More recently, this Court has twice doubled down on *Shaffer* and its reading of *Kokkonen*. In another case, it rejected *Kokkonen* as "not relevant here" because while "*Kokkonen* speaks to the District Court's ancillary jurisdiction to enforce the settlement agreement that served as a basis for the parties' stipulated dismissal," "the parties [to this case are] not concerned with enforcing their settlement agreement." *State Nat'l Ins. Co. v. Cnty. of Camden*, 824 F.3d 399, 407 (3d Cir. 2016). And in a third appeal involving a district court's jurisdiction to enforce a settlement agreement, this Court distinguished between reinstatement and enforcement based upon *Kokkonen*, noting that "language in a dismissal order providing for reinstatement" might allow for reinstatement but would not allow "enforcement of the settlement agreement itself." *Dominion Dev. Grp., LLC v. Beyerlein*, No. 17-3391, at *4 (3d Cir. May 24, 2019). "[R]einstatement of an action simply revives the underlying claim and allows the litigants back to the original battlefield," which "is totally different from the enforcement of the terms of a settlement agreement because one of the parties has not complied with those terms." *Id*. at *5.

Against that backdrop, the error in the Report & Recommendation (and in the District Court's adoption of the R&R) comes into even sharper focus. The R&R initially explained that *Kokkonen* "held that a district court lacks jurisdiction to enforce the terms of a settlement agreement," JA 10, an uncontroversial and correct recitation of the holding. The Court went wrong, however, by purporting to extend that holding to reinstatement—a procedural device that *Kokkonen* itself contrasted

with judicial enforcement, and that this Court subsequently also distinguished from judicial enforcement in its cases interpreting and applying *Kokkonen*. The R&R observed that "the Court did not retain jurisdiction" and that "the parties did not agree as a term of their settlement that the Court would retain jurisdiction," which is true. But per *Kokkonen*, *Shaffer*, and *Dominion*, those facts would bar judicial enforcement, not reinstatement. The District Court erred in relying on them to hold that it lacked jurisdiction to reinstate the case.

II. This Court could remand for consideration of the fact-bound question of reinstatement in the first instance, but on the current record it could alternatively determine that reinstatement is warranted.

This Court should reverse the District Court's denial of Mr. Sanchez's motion to reinstate based upon that court's clear legal error in declining jurisdiction. Because of the jurisdictional error, the District Court declined even to consider the merits of the reinstatement question—so regardless of how this Court views the merits of reinstatement, this Court could reverse, simply confirm that the District Court has jurisdiction to consider the merits of reinstatement in the first instance, and remand for it to do just that. It could even do so with instructions for the District Court to hold a hearing to develop evidence about Appellees' breach of the settlement agreement. But Mr. Sanchez has already put substantial evidence into the record on the reinstatement question itself, and because the law provides a clear basis for reinstating a privately-settled prison civil rights action upon breach of that agreement, *see* Section I, *supra*, this Court could alternatively remand with instructions for the District Court to reinstate Mr. Sanchez's suit.

A. Because the District Court's error on jurisdiction stopped it from considering the merits of reinstatement, this Court could remand for the District Court to address reinstatement in the first instance.

This Court could remand to the District Court for consideration of the reinstatement question on the merits for three reasons. First, this Court regularly does just that when it reverses on a jurisdictional or procedural question and District Court has not addressed the underlying substantive merits as a result of the nature of the error. Second, this Court is particularly apt to remand for consideration in the first instance when it views the potential alternative as affirming on an undeveloped basis. And third, because of the roles of appellate and trial courts, this Court also tends to remand questions, like reinstatement, that involve particularly fact-intensive analyses. For all those reasons, this Court could well remand with instructions for consideration of reinstatement in the first instance by the District Court.

First, when this Court reverses district courts on jurisdictional or procedural questions where that court has not addressed the merits, it regularly remands with instructions for the district court to consider the merits of the question in the first instance. It does this across myriad legal contexts, out of judicial restraint and discretion. *See, e.g.*, *Golden Gate National Senior Care, LLC v. Minich ex rel. Estate of Shaffer*, 629 F.App'x 348 (3d Cir. 2015) (involving Colorado River abstention and, "because . . . the district court . . . did not have occasion to reach the merits of Minich's other arguments for dismissal[, we] leave those issues for the District Court to address in the first instance on remand"); *William A. Graham Co. v. Haughey*, 568

F.3d 425 (3d Cir. 2009) ("We will therefore remand the case to the District Court to allow it to consider these issues in the first instance" after reversing on statute of limitations issue); *Estate of Smith v. Marasco*, 318 F.3d 497 (3d Cir. 2003) ("we will remand the case to allow the district court to determine that issue in the first instance" on the merits of qualified immunity). The Court is especially apt to do this when further briefing might sharpen the issues on remand, with the benefit of this Court's opinion. *See In re Nat'l Collegiate Student Loan Trusts 2003-1, 2004-1, 2004-2, 2005-1, 2005-2, 2005-3*, 971 F.3d 433 (3d Cir. 2020) ("We remand to the District Court to decide that issue in the first instance with the benefit of further briefing.").

Second, this matters particularly where a party that has lost below—like Mr. Sanchez—prevails upon this Court to reverse the sole issue upon which a district court based its ruling. "It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below." *Singleton v. Wulff*, 428 U.S. 106, 120 (1976). "While we 'may affirm a district court for any reason supported by the record,' generally, in the absence of exceptional circumstances, we decline to consider an issue not passed upon below." *Plains All Am. Pipeline L.P. v. Cook*, 866 F.3d 534 (3d Cir. 2017) (internal citation to *Brightwell v. Lehman*, 637 F.3d 187, 191 (3d Cir. 2011) omitted; also citing *Berda v. CBS Inc.*, 881 F.2d 20, 28 (3d Cir. 1989)). And this case presents no such exceptional circumstances that would warrant affirming on alternative grounds that the District Court did not address or even consider.

And third, it matters perhaps most of all in the context of the merits of Mr. Sanchez's own request to reinstate his case, here. Reinstatement is generally a fact-intensive question, as this Court has observed in the 60(b)(6) context. *See Cox v. Horn*,

757 F.3d 113, 122 (3d Cir. 2014) (explaining that this Court has "long employed a flexible, multi-factor approach to Rule 60(b)(6) motions . . . that takes into account all the particulars of a movant's case."). Where a district court has not undertaken an analysis of a fact-intensive question, remand may make particular sense.

Under the circumstances, if this Court has any doubts whatsoever about the merits of Mr. Sanchez's request for reinstatement of his underlying claims as a result of the breach on the part of Appellees, it can remand for the District Court to consider the merits of reinstatement in the first instance, including possibly with the benefit of additional testimony and a hearing.

B. Based upon the current record, alternatively, the Court could remand with instructions to reinstate the complaint.

Although the District Court did not consider the merits of the reinstatement question, this Court could simply reverse with instructions for the District Court to reinstate Mr. Sanchez's case because of his showing on the merits. In an analogous context for breached settlements not explicitly subject to reinstatement by a statutory provision under the PLRA, reinstatement motions filed pursuant to Fed. R. Civ. P. 60(b) are "a mechanism that can relieve a party from the burdens of a judgment on the merits when it becomes apparent that the judgment has been incurred in exchange for hollow promises." *In re Nazi Era Cases*, 213 F.Supp.2d at 451. And in the face of such hollow promises, reinstatement is warranted here.

First, this Court has previously explained that people seeking to reinstate complaints may look to Rule 60(b) for possible bases to do so. *Sawka v. Healtheast, Inc.*, 989 F.2d 138, 140 (3d Cir. 1993). Rule 60(b) includes six different possible bases

for relief. Motions brought pursuant to the Rule's catchall provision, 60(b)(6), must set out extraordinary circumstances that explain their filing and any applicable delay. And Mr. Sanchez's motion, included memorandum of law, and numerous exhibits explain why he could not have brought this motion any sooner than he did. The Settlement Agreement explicitly contemplated that the DOC would not hold a communal meal for the Hebrew Israelites in 2021, the first Passover after execution of the settlement, because of the COVID-19 pandemic and the DOC's responsive safety protocols. JA 166; JA 98-99. This Court has, in a different context, treated the COVID-19 emergency as one possible component of "extraordinary and compelling" circumstances, if insufficient to make out that showing on its own. *United States v. Andrews*, 12 F.4th 255, 262 (3d Cir. 2021) (considering COVID-19 pandemic as one factor in an analysis of extraordinary and compelling circumstances for purposes of compassionate release). Because Mr. Sanchez explained that everyone had contemplated the settlement would not result in a communal Passover feast for the Hebrew Israelites in 2021 because of COVID-19 restrictions, and that the settlement expressly contemplates that the first would happen in 2022, he could not reasonably have discovered that Appellees perhaps never intended to follow through on their commitments even at the time that they made them. *See* JA 99-101. So Mr. Sanchez could not have realized that the DOC intended to breach the agreement—possibly at the time it was made—in time to file within one year, and COVID-19 might contribute to good cause for filing when he did as a result.[2]

---

[2] Of course, Mr. Sanchez need not necessarily have filed within one year, anyway. Rule 60(b)(1)-(5), but notably not 60(b)(6), requires a motion that explains the basis for seeking relief "within a reasonable time." *See id*. The first three possible reasons,

Second, Mr. Sanchez's motion to reinstate, supporting memo, and exhibits demonstrate other reasons that reinstatement is warranted here. Mr. Sanchez provided information that supports reinstatement pursuant to essentially the Rule 60(b)(6) basis. *See* Fed. R. Civ. P. 60(b)(6) (any other reason that justifies relief). Mr. Sanchez took every step someone could want a prisoner to take: he did not make a stink about the 2021 Passover celebration meal because of COVID-19; he moved swiftly before and after the 2022 Passover celebration meal once it became clear the Defendants would breach the settlement agreement; he and other Hebrew Israelites tried to resolve matters in the facility first, *see, e.g.*, JA 108-138; and when those efforts did not work, he moved quickly for reinstatement in the District Court. *See Carter v. Albert Einstein Med. Ctr.*, 804 F.2d 805, 808 (3d Cir. 1986) (discussing "plaintiff acted reasonably in pressuring his lawyer to file his 60(b) motion before taking action himself" as a reason to excuse a delayed motion to reopen); *cf. Moolenaar*, 822 F.2d at 1348 (explaining that if "the reason for the attack upon that judgment was available for attack upon the original judgment," delay might not be reasonable for Rule 60(b)(6) purposes).

---

see Fed. R. Civ. P. 60(b)(1)-(3)—but notably not the last three reasons, *see* Fed. R. Civ. P. 60(b)(4)-(6)—must be raised "not more than one year after the judgment, order, or proceeding was entered or taken." *Moolenaar v. Gov't of the Virgin Islands*, 822 F.2d 1342, 1346 (3d Cir. 1987) (discussing Rule 60(b)). Widely-accepted canons of construction counsel that the rule expressly requiring the first three bases to be raised within one year means that it necessarily implies that the last three bases need not be raised within one year. *See* Antonin Scalia & Bryan A. Garner, Reading Law (2012), at 117-20 (discussing negative implication canon of construction). So the Rule's definition of "reasonable time" necessarily therefore also encompasses periods of time longer than one year.

Third, Rule 60(b) "provides a reservoir of equitable power to do justice in a particular case." *Cox*, 757 F.3d at 122 (citing *Hall v. Cmty. Mental Health Ctr.*, 772 F.2d 42, 46 (3d Cir. 1985)). To do that, courts "explicitly consider[] equitable factors" in the analysis. *Id.* (citing and characterizing *Coltec Indus., Inc. v. Hobgood*, 280 F.3d 262, 274 (3d Cir. 2002)). And here, the existing record demonstrates that the Defendants seemingly never intended to allow the Hebrew Israelites to have a separate communal Passover meal pursuant to the settlement agreement—a recognized equitable basis for reinstatement. *See Gold Kist, Inc. v. Laurinburg Oil Co.*, 756 F.2d 14, 19 (3d Cir. 1985) (considering "defendant's culpable conduct" in the context of reinstatement). Mr. Sanchez filed substantial evidence in the form of affidavits, grievance paperwork, and DOC responses, that make that case. *See* JA 108-138. Defendants' opposition to Mr. Sanchez's motion to reinstate only bolsters this; the opposition asserts that the DOC did not hold the separate Hebrew Israelite celebration meal as required by their faith and by the settlement agreement because there were only four Hebrew Israelites. JA 142. But that assertion finds no support in a) DOC staff responses to Mr. Sanchez's and other incarcerated people's grievances, which do not cite group size, *see, e.g.*, JA 115, 117; b) in the DOC's 2022 Jewish Holy Day Memo that Appellees entered in to the record below purportedly to support the assertion, which makes no mention of minimum size, *see* JA 146-152; or c) in Mr. Sanchez's submissions, which refer to at least *five* different Hebrew Israelites by name, *see* JA 99-101, JA 116-117. Under the circumstances, the Court could understandably decline to take Defendants' pretextual assertion at face value.

Moreover, none of the typical reasons to justify denying relief on the basis of Rule 60(b) cut against reinstatement here. This Court has previously explained that long-after-the-fact reopening may prejudice litigants from either an evidentiary or case preparation perspective. *See Moolenaar*, 822 F.2d at 1347; *Gold Kist,* 756 F.2d at 19 (discussing prejudice to party opposing reinstatement, and reinstating case). But that concern hardly matters here, where the question Mr. Sanchez's underlying case presents is primarily a legal one, and where the ongoing nature of the alleged violation militates against any concern about stale or destroyed evidence. Under the circumstances, the Court could remand with instructions to reinstate directly, and do so without meaningfully impairing either side's ability to litigate its case.

CONCLUSION

For all of the foregoing reasons, the judgment of the District Court should be reversed.

Respectfully submitted,

/s/ Jim Davy

Daniel M. Greenfield
Brendan Bernicker
RODERICK & SOLANGE MACARTHUR JUSTICE CENTER
501 H Street NE, Suite 275
Washington, DC 20002
(202) 869-3434
daniel.greenfield@macarthurjustice.org

Jim Davy
ALL RISE TRIAL & APPELLATE
P.O. Box 15216
Philadelphia, PA 19125
(215) 792-3579
jimdavy@allriselaw.org

Pro bono Counsel for Appellant

Dec. 4, 2023

CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 32(a)(7)(C), I certify that this brief:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) because it contains 8,834 words, including footnotes and excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 16.66.1, set in Century Schoolbook 12-point type.

I further certify that:

(iii) I am a member in good standing of the bar of this Court.

/s/ Jim Davy

Jim Davy

CERTIFICATE OF SERVICE

I certify that on Dec. 4, 2023, this brief was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

I further certify that, after receiving notice that the brief has been accepted for filing, I will file 7 paper copies of this brief and 4 copies of the accompanying appendix with the Clerk of Court within the required time.

I further certify that the paper copies of the brief and appendix I serve to the Court will be identical to the versions filed electronically.

/s/ Jim Davy

Jim Davy

APPENDIX TABLE OF CONTENTS

Volume I

Notice of Appeal: JA 1-3

Order Adopting R&R and Judgment: JA 4-5

Report & Recommendation: JA 6-11

Volume II

District Court Docket: JA 12-19

Sanchez Complaint, and exhibits: JA 20-96

Motion to Reinstate, and exhibits: JA 97-138

Response to Motion to Reinstate, and exhibits: JA 139-155

Objections to R&R: JA 156-163

Volume III (SEALED)

Sealed Exhibit to Motion to Reinstate: JA 164-168

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

Oracio Sanchez Jr., Plaintiff	:	Civil Action No. 2:19-cv-1429
	:	Judge Colville
	:	Magistrate Judge Dodge
VS	:	
	:	
Ulli Klemm, et. al., Defendants	:	

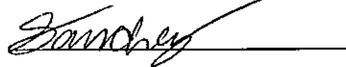
FILED
NOV 15 2022
CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

NOTICE OF APPEAL

Notice is hereby given that Oracio Sanchez Jr., Plaintiff in the above named caption, hereby appeals to the Third Circuit Court of Appeals from the order denying his Motion to Reinstate the Civil Proceedings (ECF No. 49) entered in this matter on the 1st day of November, 2022. (Case caption and citation: Sanchez v. Klemm,et al., 2:19-cv-1429.

Date: **November 7, 2022**

Respectfully Submitted,



Oracio Sanchez
Inmate No. KR-8346
SCI Fayette
50 Overlook Drive
LaBelle, PA 15450

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

Oracio Sanchez Jr., Plaintiff	:	Civil Action No. 2:19-cv-1429
	:	Judge Colville
	:	Magistrate Judge Dodge
VS	:	
	:	
Ulli Klemm, et. al., Defendants	:	

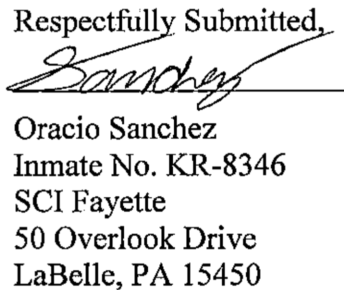
DECLARATION OF INMATE FILING

I am an inmate confined in an institution. Today, November 7, 2022, I am depositing my **Notice of Appeal** in the case in the institution's internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Date: **November 7, 2022**

Respectfully Submitted,



Oracio Sanchez
Inmate No. KR-8346
SCI Fayette
50 Overlook Drive
LaBelle, PA 15450

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

Oracio Sanchez Jr., Plaintiff	:	Civil Action No. 2:19-cv-1429 Judge Colville Magistrate Judge Dodge
VS	:	
Ulli Klemm, et. al., Defendants	:	

PROOF OF SERVICE

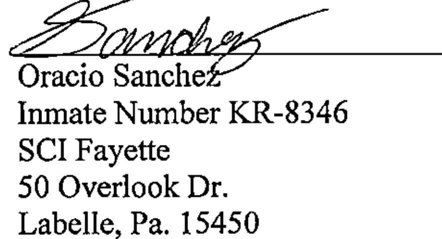
I, Oracio Sanchez Jr., hereby certify that a true and correct copy of this motion for leave to file an amended/supplemental complaint is being served upon the people listed below in accordance with the governing rules of court including the prisoner mailbox rule.

Service by mail:
2 Copies

Prothonotary
U.S. District Court
700 Grant St.
Room 3110
Pitt., Pa. 15219

DATED: **November 7, 2022**

RESPECTFULLY SUBMITTED,



Oracio Sanchez
Inmate Number KR-8346
SCI Fayette
50 Overlook Dr.
Labelle, Pa. 15450

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

ORACIO SANCHEZ, JR., Plaintiff,	)	2:19-CV-01429-RJC
vs.	)	
ULLI KLEMM and TRACY SMITH, Defendants.	)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is Plaintiff's Motion to Reinstate Civil Proceedings. (ECF No. 49). On September 20, 2022, the Honorable Patricia L. Dodge issued a Report and Recommendation (ECF No. 53) in which she recommended that the motion be denied. Plaintiff filed Objections (ECF No. 55) to Judge Dodge's Report and Recommendation, and defendants have responded. (ECF No. 56).

The district court must make a *de novo* determination of those portions of the report to which objections are made. 28 U.S.C. § 636(b)(1)(C); *see also Henderson v. Carlson*, 812 F.2d 874, 877 (3d Cir.1987). This Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The district court judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Upon review of Judge Dodge's September 20, 2022 Report and Recommendation, Plaintiff's Objections and defendants' response thereto, as well as a review of the entire record in this matter, including the settlement agreement between the parties, it is hereby ORDERED as follows:

Plaintiff's Objections to the Report and Recommendation are overruled and the Court approves and adopts the Report and Recommendation (ECF No. 53) in its entirety as the Opinion of the Court. Plaintiff's Motion to Reinstate Civil Proceedings (ECF No. 49) is hereby DENIED. The Clerk of Court shall mark this case as CLOSED.

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if any party wishes to appeal from this Order a notice of appeal, as provided in Fed. R.App. P. 3, must be filed with the Clerk of Court, United States District Court, at 700 Grant Street, Room 3110, Pittsburgh, PA 15219, within thirty (30) days.

BY THE COURT:

s/*Robert J. Colville*
Robert J. Colville
United States District Judge

DATED: November 1, 2022

cc/ecf: All counsel of record

ORACIO SANCHEZ, JR
KR-8346
SCI FAYETTE
48 OVERLOOK DRIVE
LABELLE, PA 15450

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

ORACIO SANCHEZ, JR.,	)	
	)	
Plaintiff	)	Case No. 2:19-1429
	)	
v.	)	Judge Colville
	)	Magistrate Judge Dodge
ULLI KLEMM and TRACY SMITH,	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

I. Recommendation

It is respectfully recommended that Plaintiff's Motion to Reinstate Civil Proceedings (ECF No. 49) be denied.

II. Report

Plaintiff Oracio Sanchez, Jr., who is a prisoner incarcerated at the State Correctional Institution at Fayette, Pennsylvania ("SCI Fayette"), filed a pro se civil rights complaint in 2019 against Defendants Ulli Klemm, the Religious Services Administrator at SCI Fayette, and Tracy Smith, the Director of Treatment Services. He alleged that they violated his rights by failing to allow him and other Hebrew Israelites to be included in a Passover meal at the prison. After discovery was completed but before motions for summary judgment were filed, Defendants moved to stay the case and subsequently notified the Court that the case had settled. The parties then filed a Stipulation of Dismissal, which District Judge Colville granted on December 12, 2020 and the case was dismissed with prejudice.

Currently pending before the Court is Plaintiff's motion to reinstate proceedings (ECF No. 49) that is based on Plaintiff's contention that Defendants have breached the terms of their settlement agreement. For the reasons that follow, the motion should be denied.

A. Relevant Procedural History

Plaintiff initiated this action by filing a motion to proceed in forma pauperis on October 31, 2019. The motion was granted after it was supplemented and the Complaint was filed on January 7, 2020 (ECF No. 7). Jurisdiction was based on the federal question of the alleged violation of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc to 2000cc-5 (RLUIPA) as well as the First and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983.

After a Case Management Order was entered in March 2020 (ECF No. 18) and fact discovery was closed, Defendants, with the consent of Plaintiff, filed a Motion to Stay (ECF No. 43), in which they indicated that they were exploring a resolution of the case. The motion was granted and the case was stayed until November 30, 2020 (ECF No. 45).

On December 11, 2020, the parties filed a Joint Stipulation of Dismissal with Prejudice pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure (ECF No. 47). District Judge Colville issued an order granting the Joint Stipulation on December 12, 2020, and this action was dismissed with prejudice (ECF No. 48). Notably, the Stipulation of Dismissal did not request that the Court retain jurisdiction over the case and Judge Colville's order did not state that the Court would do so.

On August 3, 2022, Plaintiff filed a Motion to Reinstate Civil Proceedings (ECF No. 49). He contends that Defendants failed to adhere to the provisions of the settlement agreement by moving the "Passover meal" from April 15, 2022 to the next day, allegedly because "Jewish tradition did not allow Jewish inmates to eat the Passover meal on Friday night." Plaintiff states that he reminded Frank Lewis, the Facility Chaplaincy Program Director (FCPD), that Hebrew

Israelites and Jews are two separate religions and that requiring the Hebrew Israelites to have the Passover meal at the same time as the Jewish inmates would constitute a violation of the settlement agreement, which stated that Hebrew Israelites "shall be permitted to observe the Passover holiday with a communal meal separately from the mainstream Jewish population, once the COVID-19 pandemic resolves such that communal meals can be afforded in a safe manner at the Department's discretion." Plaintiff contends that prison officials ignored his complaints and provided the Passover meal on April 16, 2022, for both the Jewish inmates and the Hebrew Israelite inmates, which he asserts is a violation of the terms of the settlement agreement. Plaintiff asserts that the decision to hold the Passover meal on April 16 was made Mr. Lewis, who is not a named defendant in this case.[1]

Defendants subsequently filed a response to Plaintiff's motion (ECF No. 52), in which they dispute the merits of his claim. They argue that the decision to hold both observances on the same day was because of the limited number of inmates requesting to participate in each respective observance as well as considerations related to staffing. Additionally, Defendants argue that because the Settlement Agreement does not require that Passover be observed on any specific date, the fact that the meal was served on April 16 did not violate the terms of the agreement.

B. Subject Matter Jurisdiction

Before it can examine the issues raised in Plaintiff's motion, the Court must first address the issue of subject matter jurisdiction. A federal court has an obligation to examine its own jurisdiction at any stage of the proceedings, even if no party raises the issue. *See FW/PBS, Inc. v.*

[1] Thus, even if Plaintiff was entitled to reinstatement, his pending claims are not against Mr. Lewis.

City of Dallas, 493 U.S. 215, 230-31 (1990); Fed. R. Civ. P. 12(h)(3) ("If a court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the case.").

Plaintiff states that he is bringing this motion to reinstate proceedings pursuant to a provision of the Prison Litigation Reform Act ("PLRA") that governs private settlement agreements on civil actions related to prison conditions. 18 U.S.C. § 3626(c). Section 3626(c) provides as follows:

> **c) SETTLEMENTS.—**
> **(1)CONSENT DECREES.—**
> In any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a).
> **(2)PRIVATE SETTLEMENT AGREEMENTS.—**
> **(A)**Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled.
> **(B)**Nothing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy available under State law.

18 U.S.C. § 3626(c). *See also* 18 U.S.C. § 3626(g)(6) (defining "private settlement agreement" as "an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled.").

The terms of the parties' settlement agreement were not placed into the record at any time before the case was dismissed. However, Plaintiff has attached the General Release and Settlement Agreement ("Settlement Agreement") as an exhibit to his motion, however, thus placing it in the record for the first time.[2] The Settlement Agreement does not include a

[2] The Court has sealed this document (ECF No. 49 Ex. 1) so that it can be viewed only by the Court and the parties.

provision that the Court retains jurisdiction over this action after its dismissal.[3]

In *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375 (1994), the Supreme Court held that a district court lacks jurisdiction to enforce the terms of a settlement agreement after the underlying action has been dismissed with prejudice under Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure. As noted in *Disability Law Ctr. v. Massachusetts Dep't of Correction*, 960 F. Supp. 2d 271 (D. Mass. 2012):

> The Supreme Court recognized in *Kokkonen* that a United States district court may retain jurisdiction to enforce the provisions of a private settlement agreement even as it dismisses the litigation that the settlement resolves. If the court does not issue an order of dismissal that states it is retaining jurisdiction or incorporate the terms of the settlement agreement into the order of dismissal, enforcement of the settlement agreement is left for state courts, unless there is an independent basis for federal jurisdiction.

Id. at 278 (citing *Kokkonen*, 511 U.S. at 381-82).

Based on the holding in *Kokkonen*, several courts have held that when an action is resolved by a private settlement and dismissal and a prisoner subsequently seeks to reinstate the action pursuant to § 3626(c)(2), the court lacks subject matter jurisdiction to reinstate the case unless the court retained jurisdiction or incorporated the terms of the settlement agreement into the order of dismissal. *See Benning v. Georgia*, 2018 WL 5283446, at *2 (S.D. Ga. Oct. 24, 2018); *Hazelton v. Wrenn*, 2013 WL 1953354, at *2 (D.N.H. Apr. 10, 2013), *report and recommendation approved*, 2013 WL 1953517 (D.N.H. May 9, 2013).

Here, the Court did not retain jurisdiction or incorporate the terms of the settlement agreement into the order of dismissal. Further, the parties did not agree as a term of their settlement that the Court would retain jurisdiction after they stipulated to the dismissal of this

[3] The Settlement Agreement also states that it "is not, and cannot and shall not be construed to be a consent decree."

Case 2:19-cv-01429-PJC-PLD Document 53 Filed 09/20/22 Page 6 of 6

action. Thus, the Court lacks jurisdiction to reinstate Plaintiff's claims.

Plaintiff is not without a remedy, however. If he asserts that the terms of the settlement agreement have been breached, he may file a breach of contract action in state court. *See* 18 U.S.C. § 3626(c)(2)(B); *Kokkonen*, 511 U.S. at 382 (confirming that "enforcement of the settlement agreement is for state courts."); *Benning*, 2018 WL 5283446, at *2; *Hazelton*, 2013 WL 1953354, at *2.

III. Conclusion

For the reasons stated above, it is respectfully recommended that Plaintiff's Motion to Reinstate Civil Proceedings (ECF No. 49) be denied.

Litigants who seek to challenge this Report and Recommendation must seek review by the district judge by filing objections by October 4, 2022 or by October 7, 2022 for non ECF users. Any party opposing the objections shall file a response by October 18, 2022 or by October 21, 2022 for non ECF users. Failure to file timely objections will waive the right of appeal.

Dated: September 20, 2022

s/Patricia L. Dodge
PATRICIA L. DODGE
United States Magistrate Judge

cc: Oracio Sanchez, Jr.
KR-8346
SCI Fayette
48 Overlook Drive
Labelle, Pa 15450