

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

CHARLES JOSEPH FREITAG, JR., as
Administrator of the ESTATE OF
CHARLES JOSEPH FREITAG, SR.,
Plaintiff,

v.

BUCKS COUNTY, *et al.*,
Defendants.

Civil No. 2:19-cv-05750-JMG

**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 (“Jail”) 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*² and other news outlets have reported on these suits that allege, for example, failure “to properly monitor and treat”³ inmates and failure “to address known weaknesses with its treatment and monitoring policies” for inmates experiencing substance withdrawal.⁴ In fact, in 2022 alone, Bucks County and PrimeCare settled three wrongful death suits filed in 2018, with Bucks County paying out nearly \$2 million in those settlements.⁵ That same year, five additional Jail inmates died in custody.⁶ A sixth inmate also died in 2022, but only after Bucks County released him from custody when he was transported to the hospital for further treatment.⁷ The Estate of Charles Freitag, Sr., who was one of the plaintiffs that filed suit in 2018, brought this wrongful death suit.⁸

Yet the public still does not have a full accounting of the circumstances surrounding his death and the resolution of this lawsuit. Mr. Freitag’s Estate alleged that he died because Defendants acted with “deliberate indifference to the fact that [Freitag] was particularly vulnerable to suicide” by

¹ See, e.g., *Harbaugh v. Bucks County et al.*, Docket No. 2:20-CV-01685 (E.D. Pa. Mar. 31, 2020); *Medzadourian v. Bucks County et al.*, Docket No. 2:19-CV-04752 (E.D. Pa. Oct. 11, 2019); *Adami et al. v. County of Bucks et al.*, Docket No. 2:19-CV-02187 (E.D. Pa. May 20, 2019); *Farrington v. County of Bucks et al.*, Docket No. 2:17-CV-05826 (E.D. Pa. Dec. 29, 2017); *Lopez v. Bucks County et al.*, Docket No. 2:15-CV-05059 (E.D. Pa. Sept. 10, 2015).

² The corporate entity which publishes the *Bucks County Courier Times* is GateHouse Media Pennsylvania Holdings, Inc. d/b/a the *Bucks County Courier Times*.

³ Jo Ciavaglia, *Family of Bucks man who died in jail to receive \$1M in settlement with county, medical provider*, *Bucks Cnty. Courier Times* (Aug. 16, 2022), <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, *Family of Bucks man*].

⁴ Jo Ciavaglia, *Bucks County to pay \$300K to settle wrongful death lawsuit filed by family of jail inmate*, *Bucks Cnty. Courier Times* (Sept. 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, *Name of latest Bucks County inmate death released; earlier inmate death a drug overdose*, *Bucks Cnty. Courier Times* (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*].

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

failing to adequately evaluate and supervise Freitag’s mental health conditions.⁹ But those allegations were never tested at trial because the parties settled. The *Bucks County Courier Times* therefore seeks to intervene and move this Court to unseal the full settlement, including the agreement between the Estate and PrimeCare and any related records. *See* Dkt. No. 133.

While PrimeCare is a private company, local government agency Bucks County pays it millions of dollars to exclusively provide medical, dental, and mental health services at the Jail.¹⁰ PrimeCare’s prison activities—funded by taxpayer dollars—are thus matters of significant public concern. Yet this inherently public information has been kept under seal for months. The sealing—which was ordered despite no party asserting a good-cause basis and without findings of fact—flouts the First Amendment and common law rights of access. In contrast, the newspaper was able to provide the public with a full accounting of PrimeCare’s \$750,000 publicly-available settlement in another suit last year involving a Bucks County inmate who, like here, died shortly after arriving to the Jail.¹¹ The *Bucks County Courier Times* therefore respectfully requests to intervene and move to unseal the settlement records here to vindicate the public and press’s First Amendment and common law rights of access.

PROCEDURAL HISTORY

In December 2019, Charles Freitag, Jr., as Administrator of Charles Freitag, Sr.’s Estate, filed a wrongful death action in this Court against Bucks County, PrimeCare, and various individual defendants. Through counsel, the family stated that they not only wanted justice for Mr. Freitag, Sr.,

⁹ Compl. ¶ 1.

¹⁰ PrimeCare has also contracted with numerous other Pennsylvania counties that have likewise been hit with federal lawsuits concerning prison medical care. *See* Joshua Vaughn, *Lack of medical care led to death of 19-year-old in Pa. jail, mom says in lawsuit*, PennLive (Dec. 13, 2021), <https://www.pennlive.com/news/2021/12/lack-of-medical-care-led-to-death-of-19-year-old-in-pa-jail-mom-says-in-lawsuit.html>.

¹¹ *See* Ciavaglia, *Family of Bucks man, supra* note 3.

but also sought to ensure that tragedies like this “don’t affect another family.”¹² On November 3, 2022, the Court ordered the clerk to docket Plaintiff’s petition to settle the case under seal.

FACTUAL BACKGROUND

a. The Wrongful Death Suit

In recent years, the *Bucks County Courier Times*, “the most widely read daily newspaper” in the Philadelphia suburbs,¹³ has repeatedly reported on the Jail and the quality of medical and mental health care administered there by its private medical contractor PrimeCare.¹⁴ The *Bucks County Courier Times* is particularly interested in the inmate deaths allegedly caused by Defendants’ deficient care, including the death of Mr. Freitag.¹⁵

Mr. Freitag, a first-time offender, died by suicide the day after his sentencing.¹⁶ His death followed two suicide attempts and psychiatric hospitalizations in the preceding 16 months.¹⁷ Indeed, that second attempted suicide led to his incarceration.¹⁸ He died despite his attorney alerting a prison staff member of his worsening mental health and his history of suicide attempts.¹⁹

In December 2019, the administrator of Mr. Freitag’s Estate filed suit against Defendants. *See* Compl. ¶¶ 2–11. The suit alleged that PrimeCare and Jail officials were “acutely aware” of many facts indicating that Freitag, Sr., was a suicide risk²⁰ and acted with “deliberate indifference” to this risk. *Id.* ¶¶ 1–2; *see also id.* ¶¶ 102, 107–08, 127–28.

¹² Jo Ciavaglia, *Family files wrongful death suit against Bucks County over prison suicide*, Bucks Cnty. Courier Times (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*].

¹³ *See* Bucks County Courier Times, FACEBOOK, <https://www.facebook.com/buckscouriertimes/about/> (last visited Mar. 30, 2023).

¹⁴ *See, e.g.,* Ciavaglia, *Family of Bucks man*, *supra* note 3.

¹⁵ *See* Ciavaglia, *Family files wrongful death suit*, *supra* note 12; Jo Ciavaglia, *Judge: Wrongful death suit against Bucks County jail can proceed*, Bucks Cnty. Courier Times (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 4.

¹⁶ *See* Ciavaglia, *Family files wrongful death suit*, *supra* note 12.

¹⁷ *See id.*

¹⁸ *See* Compl. ¶ 2.

¹⁹ *See* Ciavaglia, *Family files wrongful death suit*, *supra* note 12.

²⁰ *See* Compl. ¶ 2.

On November 3, 2022, after eventually reaching a settlement, the administrator filed a motion for leave to file the petition for Court Order of Settlement under seal. *See* Dkt. No. 133. The same day, the Court issued an order granting the motion to seal in a single sentence. *See* Dkt. No. 134.

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 state 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 gross settlement with Plaintiff. Unlike in *Buehl*, in which the government failed to participate in wholesale purchasing of commissary goods, Bucks County

actively participated in the inadequate medical care and wrongful death litigation and settlement process, approving the joint settlement. And also unlike in *Buehl*, where the wholesale prices affected the vendor alone, PrimeCare’s failure to perform its obligations “directly relat[ed]” to its contract cost Bucks County some portion of the joint gross settlement of \$675,000.

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

Then, in a separate attempt to access these documents, on March 15, 2023, Proposed Intervenor sent PrimeCare a letter 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 opposed 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 a similar case concerning PrimeCare’s allegedly inadequate medical care, *Reilly v. York County*, No. 1:18-cv-01803 (M.D. Pa.). Notably, no party in that case filed an opposition to intervenor’s motion.

QUESTION PRESENTED

Should the Court allow the *Bucks County Courier Times* to intervene and unseal settlement records related to the Jail’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 three reasons. First, the *Bucks County Courier Times* has standing to

intervene. *See* Dkt. No. 133. 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*' 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 (citation omitted). The *Bucks County Courier Times* thus 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.

Both the United States Supreme Court and the Third Circuit recognize First Amendment and common law rights of access to judicial proceedings and their records. 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 Court*, 478 U.S. 1, 13 (1986).

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. And experience and logic counsel that the First Amendment right of access 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 over forty years ago in the context of a criminal trial. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980). The Third Circuit has since extended this right to civil proceedings and their records. *See Publiker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1070 (3d Cir. 1984).²¹ Neither the Supreme Court nor the Third Circuit has directly held that this First Amendment right applies to settlement agreements. But the Supreme Court’s experience-and-logic test for such access compels the unsealing of the settlement records here. *See Press-Enter. Co.*, 478 U.S. at 8.

1. The Experience Prong

Under the experience prong, courts ask “whether the place and process have historically been open to the press.” *In re Avandia Mktg., Sales Pracs. & Prods. 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)). The longstanding history of public settlement agreements and similar judicial records in the Third Circuit and other federal courts satisfies this prong.

While the Third Circuit has never directly addressed whether the First Amendment right of access applies to settlement agreements, *see, e.g., In re Avandia*, 924 F.3d at 675–76, 679, settlement agreements fall neatly within the Third Circuit’s precedents for finding such a right. The Third Circuit has previously held that the right applies to civil proceedings and transcripts, *see Publiker*, 733 F.2d at 1066, 1070, and civil judicial records, *see Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 659 (3d Cir. 1991). 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 filed with a court are thus judicial records with an attendant First Amendment right of access.

²¹ 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).

Indeed, the Third Circuit has relatedly 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 Publ’g Co. v. U.S. District Court*, 920 F.2d 1462, 1465 (9th Cir. 1990)). That logic extending the right of access to plea agreements in the criminal context applies with equal force to settlement agreements in the civil context that resolve most civil cases. Taken together, the Third Circuit’s precedents finding a First Amendment right to access civil judicial records and an analogous right to access criminal plea agreements support the right also extending to settlement agreements.

Moreover, the experience prong does not just “look 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) (citation and internal quotation marks omitted). And courts nationwide have trended towards a right of access to court-filed settlement agreements under the common law. *See, e.g., Sec. & Exch. Comm’n v. Van Waeyenberghe*, 990 F.2d 845, 849 (5th Cir. 1993) (“Once a settlement 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); *Xue Lian 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 monitors appointed under settlements in institutional-change litigation. *See United States v. Erie County*, 763 F.3d 235, 241–42 (2d Cir. 2014). Both Third Circuit precedent 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.’” *In re Avandia*, 924 F.3d at 673 (quoting *N. Jersey Media Grp.*, 836 F.3d at 429). Public access to settlement agreements “furthers several societal interests” just as access to plea agreements does. *Thomas*, 905 F.3d at 282. Their disclosure “serves as a check on the integrity of the judicial process.” *Bank of Am. Nat’l Tr. & Sav. Ass’n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 345 (3d Cir. 1986). It does so by “promoting the ‘public perception of fairness’” and “public scrutiny” over “the judicial process.” *See Thomas*, 905 F.3d at 282 (citation omitted). Logic thus counsels that, when most cases resolve via settlements instead of trials, these settlements must be made public.

Ultimately, the First Amendment—under Third Circuit precedent and the experience-and-logic test—supports the public’s right of access to settlement records.

b. Common Law Right of Access

The common law likewise supports the public’s right of access. “[A]ntedat[ing] the Constitution,” the common law right of access aims “to promote[] public confidence in the judicial system.” *LEAP Sys., Inc. v. MoneyTrax, Inc.*, 638 F.3d 216, 220 (3d Cir. 2011) (citation and internal quotation marks omitted). It thus embraces a “strong presumption of openness” of judicial proceedings and their records. *In re Avandia*, 924 F.3d at 672 (citation omitted).

Whether the right of access attaches to a document depends on whether it is a “judicial record.” *In re Cendant Corp.*, 260 F.3d at 192. When a document is “filed with the court, or otherwise somehow incorporated or integrated into a district court’s adjudicatory proceedings,” then this “clearly establishes” that it is a judicial record subject to this presumption. *Id.* Settlement agreements

thus qualify as judicial records subject to this presumption of openness. *See LEAP Sys., Inc.*, 638 F.3d at 220 (“[T]he court’s approval of a settlement or action on a motion 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[.]’” (first quoting *Rittenhouse*, 800 F.2d at 344; then quoting *Enprotech Corp. v. Renda*, 983 F.2d 17, 20 (3d Cir. 1993))).

Here, the *Bucks County Courier Times* seeks access to the improperly sealed settlement records. As judicial records, the common law right of access attaches to them and they are subject to a strong presumption of openness.

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

Neither the common law nor the First Amendment right of access is “absolute,” *LEAP Sys., Inc.*, 638 F.3d at 221, but the burden to overcome either is high. *See Rittenhouse*, 800 F.2d at 344. To overcome the First Amendment right of access, parties moving to seal must satisfy strict scrutiny. *In re Avandia*, 924 F.3d at 673. They must 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.* (quoting *Publicker*, 733 F.2d at 1073). And while less stringent, to overcome the common law right of access, parties must “show that the interest in secrecy outweighs the presumption” of openness. *See Rittenhouse*, 800 F.2d at 344.

To overcome those rights of access, courts “must balance the requesting party’s need for information against the injury that might result if uncontrolled disclosure is compelled.” *In re Avandia*, 924 F.3d at 671 (quoting *Pansy*, 23 F.3d at 787). And the court 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 (quoting *In re*

Cendant Corp., 260 F.3d at 194). “[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.

Here, PrimeCare cannot satisfy either standard, and the record contains no evidence that PrimeCare argued for or that the Court found an overriding interest in closure before sealing the settlement records. The motion to seal fails to explain the sealing. *See* Dkt. No. 134. A single sentence concerns sealing, and it contains no discussion of any considerations that influenced sealing. *See id.*

Even if this Court had articulated findings on the record, none could 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 (citation omitted).

Here, these records do not concern a settlement between private parties. *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, these records concern Bucks County, its contractor performing a governmental function—PrimeCare—and inmates or their estates.

Despite being a private company, PrimeCare performs a governmental function because it exclusively provides medical care to the Jail. *See Buehl*, 6 A.3d at 30 (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. Because the settlement records were sealed, questions remain concerning PrimeCare’s portion of the

settlement as it continues to serve as the prison's health care contractor. Because the *Bucks County Courier Times* seeks access to the settlement records to clarify this matter of significant public concern, the public interest factors weigh heavily in favor of disclosure.

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 "mere embarrassment." *In re Avandia*, 924 F.3d at 679 (quoting *Westinghouse Elec. Corp.*, 949 F.2d at 662). No tangible harm of unsealing could exist for PrimeCare that would amount to more than mere embarrassment.

Moreover, "[e]ven 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). If the records contain any genuinely confidential information, the Court should merely redact that information rather than seal the records in their entirety.

Thus, the settlement agreement's sealing cannot withstand strict scrutiny or the common law's less stringent standard. The Court's sealing order articulates no on-the-record findings from which a reviewing court can conduct an adequate review. *See* Dkt. No. 134. 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 these reasons, the *Bucks County Courier Times* requests permission to intervene only to seek the unsealing of the settlement records in Dkt. No. 133. 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 fall outside the First Amendment and common law rights of access.

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Respectfully submitted,

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²² Clinic students Patrick George and Juzhi Zheng 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 May 4, 2023, to counsel of record as follows:

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