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15 Attorneys for Plaintiffs

16
17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 JESSE HERNANDEZ et al., on behalf of
themselves and all others similarly situated,

20 Plaintiffs,

21 v.

22 COUNTY OF MONTEREY; MONTEREY
23 COUNTY SHERIFF’S OFFICE;
CALIFORNIA FORENSIC MEDICAL
24 GROUP, INCORPORATED, a California
corporation; and DOES 1 to 20, inclusive,

25 Defendants.
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Case No. CV 13 2354 BLF

**DECLARATION OF CARA E.
TRAPANI IN SUPPORT OF
PLAINTIFFS’ MOTION TO
ENFORCE THE SETTLEMENT
AGREEMENT AND WELLPATH
IMPLEMENTATION PLAN**

Judge: Hon. Beth Labson Freeman
Date: August 24, 2023
Time: 9:00 a.m.
Crtrm.: 3

1 I, Cara E. Trapani, declare:

2 1. I am an attorney duly admitted to practice before this Court. I am an
3 associate in the law firm of Rosen Bien Galvan & Grunfeld LLP, counsel of record for
4 Plaintiffs. I have personal knowledge of the facts set forth herein, and if called as a
5 witness, I could competently so testify. I make this declaration in support of Plaintiffs’
6 Notice of Motion and Motion to Enforce the Settlement Agreement and Wellpath
7 Implementation Plan.

8 2. After approving the parties’ Settlement Agreement and the Implementation
9 Plans developed by the County of Monterey and Wellpath, Inc. (“Wellpath,” formerly
10 California Forensic Medical Group or “CFMG”), the Court appointed neutral subject-area
11 monitors for five distinct areas—dental care, medical care, mental health care, Americans
12 with Disabilities Act (“ADA”) compliance, and corrections and safety. The Order of
13 Reference requires the monitors to assess Defendants’ substantial compliance with the
14 Settlement Agreement and the Implementation Plans. Dkt. 563 at 2-4.¹

15 3. In 2016, the Court appointed Dr. Bruce Barnett as the neutral monitor for
16 medical care, Dr. Viviane G. Winthrop for dental care, Dr. Kerry Hughes for mental health
17 care, Timothy Gilbert for ADA compliance, and Michael Hackett for corrections and
18 safety. *Id.* In July 2019, Mr. Gilbert and Mr. Hackett were replaced by Michael Brady for
19 ADA compliance, and Richard Bryce for corrections and safety. Dkt. 658 at 2. In
20 April 2022, Dr. Hughes was replaced by Dr. James Vess, who now monitors mental health
21 care. Dkt. 744 at 2. In June 2022, after Mr. Brady tragically passed away, the Court
22 appointed Eric McSwain to monitor ADA architectural compliance and Terri McDonald to
23 monitor ADA programmatic compliance. Dkt. 753 at 2.

24 4. The Order Appointing Neutral Monitors and Order of Reference authorizes
25 each monitor to conduct two site visits each year to assess substantial compliance with the
26

27 _____
28 ¹ Citations to filed pleadings are to the ECF-generated page numbers.

1 Settlement Agreement and Implementation Plans. Dkt. 563 at 3. Each site visit may take
2 up to two days. *Id.* The monitors can interview staff and incarcerated people, and request
3 and review documents. *Id.* at 3-4. Defendants must provide the monitors with the
4 documents they request within ten days prior to the monitor’s site visit. *Id.* at 3. The
5 medical, mental health, and dental monitors are authorized to access patients’ electronic
6 health records. *Id.* at 3-4.

7 5. At least twice a year, each monitor must prepare a draft report that
8 determines whether Defendants are “substantially complying” with the Settlement
9 Agreement and applicable Implementation Plan. *Id.* at 4. If the draft report contains
10 findings of non-compliance, it must recommend actions Defendants should take to achieve
11 substantial compliance. *Id.* The parties have thirty days to provide written comments,
12 objections, or to cure issues, and seven days to reply. *Id.* The monitor must issue a final
13 report within twenty days after the later of the monitor’s receipt of any comments,
14 objections, or replies, or any re-inspection. *Id.*

15 6. Pursuant to the Court’s May 29, 2020 Order, each monitor may conduct one
16 additional monitoring tour and issue one additional report per year, for a total of three two-
17 day inspections and three reports per year, per monitor. Dkt. 671 at 6.

18 7. In addition to the above formal monitoring duties, the Court’s June 3, 2022
19 Order authorizes the medical, mental health, and dental monitors to engage in enhanced
20 mentoring, consisting of up to four *additional* visits per year (each up to one week long) to
21 “mentor and shadow staff, review patient files, provide guidance, and train staff in the
22 requirements of the Implementation Plans.” Dkt. 751 at 7-8. The mentoring visits do not
23 require written reports. *Id.*

24 8. Since 2017, each of the neutral monitors have issued periodic final reports
25 pursuant to the above processes. As of the date of this filing, Dr. Barnett has issued
26 thirteen final monitoring reports and two reports regarding his enhanced mentoring
27 activities. Dr. Hughes and Dr. Vess have collectively issued nine final reports.

28 Dr. Winthrop has issued eight final reports and a draft ninth report. True and correct

1 copies of each of these reports are attached hereto, as detailed below. The monitors'
2 findings regarding the medical, mental health, and dental care requirements at issue in
3 Plaintiffs' instant motion are also discussed in detail below.

4 **MEDICAL CARE MONITORING REPORTS**

5 9. Attached hereto as **Exhibit 1** is a true and correct copy of Dr. Barnett's
6 finalized 1st Medical Report (toured March 9-10, 2017), dated June 13, 2017 and received
7 by my firm on May 31, 2017 via an email sent by Dr. Barnett.²

8 10. Attached hereto as **Exhibit 2** is a true and correct copy of Dr. Barnett's
9 finalized 2nd Medical Report (toured September 7-8, 2017), dated December 20, 2017 and
10 received by my firm on December 21, 2017 via an email sent by Dr. Barnett.

11 11. Attached hereto as **Exhibit 3** is a true and correct copy of Dr. Barnett's
12 finalized 3rd Medical Report (toured April 9-10, 2018), dated July 2, 2018 and received by
13 my firm on July 2, 2018 via an email sent by Dr. Barnett.

14 12. Attached hereto as **Exhibit 4** is a true and correct copy of Dr. Barnett's
15 finalized 4th Medical Report (toured October 1-2, 2018), undated and received by my firm
16 on April 30, 2019 via an email sent by Dr. Barnett.

17 13. Attached hereto as **Exhibit 5** is a true and correct copy of Dr. Barnett's
18 finalized 5th Medical Report (toured April 15-16, 2019), dated June 10, 2019 and received
19 by my firm on June 10, 2019 via an email sent by Dr. Barnett.

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21 _____
22 ² It is not clear why Dr. Barnett's first report include a date in the heading that post-dates
23 the day he provided it to the parties. Furthermore, in conjunction with each of his finalized
24 monitoring reports, it is Dr. Barnett prepared Excel spreadsheet audit tools, as well as an
25 Excel spreadsheet containing individual patient case reviews. Because these voluminous
26 files contain significant patient-level information protected by the Protective Order in this
27 case (Dkt. 401), I am not attaching those documents to this declaration. All parties have
28 access to these files, and Plaintiffs can make this data available to the Court upon request.

1 14. Attached hereto as **Exhibit 6** is a true and correct copy of Dr. Barnett’s
2 finalized 6th Medical Report (toured October 24-25, 2019), dated December 30, 2019 and
3 received by my firm on December 30, 2019 via an email sent by Dr. Barnett.

4 15. Attached hereto as **Exhibit 7** is a true and correct copy of Dr. Barnett’s
5 finalized 7th Medical Report (toured June 18, 2020), dated August 3, 2020 and received by
6 my firm on August 3, 2020 via an email sent by Dr. Barnett.

7 16. Attached hereto as **Exhibit 8** is a true and correct copy of Dr. Barnett’s
8 finalized 8th Medical Report (paper audit), dated September 4, 2020 and received by my
9 firm on September 14, 2020 via an email sent by Dr. Barnett.

10 17. Attached hereto as **Exhibit 9** is a true and correct copy of Dr. Barnett’s
11 finalized 9th Medical Report (toured December 14-15, 2020), dated February 11, 2021,
12 and received by my firm on February 11, 2021 via an email sent by Dr. Barnett.

13 18. Attached hereto as **Exhibit 10** is a true and correct copy of Dr. Barnett’s
14 finalized 10th Medical Report (toured April 29, 2021), dated June 25, 2021, and received
15 by my firm on June 28, 2021 via an email sent by Dr. Barnett.

16 19. Attached hereto as **Exhibit 11** is a true and correct copy of Dr. Barnett’s
17 finalized 11th Medical Report (toured September 30-October 1, 2021), dated
18 November 30, 2021, and received by my firm on November 30, 2021 via an email sent by
19 Dr. Barnett.

20 20. Attached hereto as **Exhibit 12** is a true and correct copy of Dr. Barnett’s
21 finalized 12th Medical Report (reporting period of November 2021 through May 2022),
22 dated July 20, 2022, and received by my firm on July 20, 2022 via an email sent by
23 Dr. Barnett.

24 21. Attached hereto as **Exhibit 13** is a true and correct copy of Dr. Barnett’s
25 finalized 13th Medical Report (toured October 13, 2022), dated December 26, 2022, and
26 received by my firm on December 26, 2022 via an email sent by Dr. Barnett.

27 22. Attached hereto as **Exhibit 14** is a true and correct copy of Dr. Barnett’s
28 finalized 1st Enhanced Monitoring and Mentoring Report (paper review) (hereafter “1st

1 Mentoring Report”), dated January 25, 2023, and received by my firm on January 27, 2023
2 via an email sent by Dr. Barnett.

3 23. Attached hereto as **Exhibit 15** is a true and correct copy of Dr. Barnett’s
4 summary report from his second mentoring visit to the Jail from March 6-9, 2023
5 (hereafter “2nd Mentoring Report”), dated March 13, 2023, and received by my firm on
6 March 13, 2023 via an email sent by Dr. Barnett.

7 24. Attached hereto as **Exhibit 16** is a true and correct copy of the finalized
8 Medical Care Corrective Action Plan (“CAP”) that was created by Wellpath and approved
9 by Dr. Barnett as a result of the Court’s May 29, 2020 Order. *See* Dkt. 671 at 5-6.

10 25. Attached hereto as **Exhibit 17** is a true and correct copy of Wellpath’s
11 current staffing plan (hereafter “Wellpath Staffing Matrix”) that I received via email from
12 Wellpath’s Implementation Specialist on April 14, 2022.

13 **SUSTAINED NONCOMPLIANCE WITH MEDICAL REQUIREMENTS**

14 26. **Health Care Staffing.** The Settlement Agreement requires Wellpath to
15 maintain “adequate staffing to provide all necessary medical and mental health care ...”
16 Dkt. 494 at 16. Wellpath’s Implementation Plan similarly requires Wellpath to maintain
17 “sufficient staff to ensure compliance” with the other mandates of the Plan. Dkt. 532 at
18 116. Although there is a staffing plan included as Exhibit I to the Implementation Plan
19 (*see id.* at 140), Wellpath has updated its staffing plan pursuant to the requirement that it
20 must “evaluate on an on-going basis its staffing levels to ensure that all staffing positions
21 are filled and sufficient staff is employed to ensure compliance with the CFMG
22 Implementation Plan.” *Id.* at 116. [REDACTED]

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³ Citations to the monitors' reports are to the page numbers generated by my firm that correspond to each exhibit in the bottom right hand corner of the page.

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9 28. **Intake Screening**. The Settlement Agreement provides that Defendants will
 10 “ensure that arriving prisoners are promptly screened for urgent medical ... needs, with
 11 prompt follow-up” Dkt. 494 at 13. Wellpath’s Implementation Plan requires that
 12 “[a]ll arrestees ... will be screened by a Registered Nurse (RN) at the time of intake
 13 [i]n a manner to ensure the inmate’s privacy.” Dkt. 532 at 11. The intake screening must
 14 include, among other things, taking of vital signs and inquiry into medical issues,
 15 medications, and substance use. *Id.* at 13-14, 29; Dkt. 494 at 15 (same); Dkt. 460 at 11-12.
 16 “Inmates with medical ... conditions identified during intake screening ... shall be
 17 assessed by the Booking RN who will begin initial treatment planning ... and schedul[e]
 18 referrals for follow up evaluation” Dkt. 532 at 27; *id.* at 12-14, 29, 41-42, 72
 19 (describing various conditions the intake nurse must screen for).

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30. **Sick Call.** The Settlement Agreement provides that “Defendants shall ensure timely access to necessary treatment by Qualified Medical Professionals for prisoners with medical issues.” Dkt. 494 at 16; *see also* Dkt. 532 at 21 (section on Health Care Philosophy providing same information). Wellpath’s Implementation Plan provides that “[h]ealth ... complaints of inmates shall be collected, processed and documented on a daily basis,” and patients must be scheduled for the next sick call if the slip was received prior to 2300 hours. *Id.* at 25-26. Sick call must be conducted Monday through Friday in a private clinical environment and sick call slips must be “filed in the inmate’s medical record.” *Id.* at 26. As part of the sick call process, an MD or RN must visit individuals housed in holding and isolation cells on Monday, Wednesday, and Friday. *Id.*

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4 32. **Chronic Care.** Wellpath’s Implementation Plan requires that “[i]nmates
5 with chronic medical conditions will be referred to and seen by a medical provider within
6 five to seven days of arrival.” Dkt. 532 at 14. “Inmates with chronic care conditions will
7 be managed pursuant to chronic care protocols and standardized procedures that are
8 consistent with national practice guidelines.” *Id.* at 28. Patients with chronic health
9 conditions, such as diabetes, respiratory disorders, cardiac disorders, hypertension, seizure
10 disorders, communicable diseases, and psychiatric disorders, must be seen by an FNP, PA,
11 or MD at least every 90 days, and more frequently if needed. *Id.* at 28, 31. At every 90-
12 day appointment, the provider must (1) assess the patient’s medications, complaints, and
13 compliance with the treatment plan; (2) examine vital signs and weight; (3) assess
14 diagnosis, degree of control, compliance with the treatment plan and clinical status as
15 compared to prior visits; and (4) conduct lab and diagnostic tests as necessary, develop
16 strategies to improve outcomes if the condition has worsened, educate the patient, and
17 refer to an MD or specialist, and/or conduct discharge planning as necessary. *Id.* at 32-33.

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21 34. **Health Care Maintenance.** Wellpath’s Implementation Plan requires that
22 all patients receive both a 14-day health inventory and communicable disease screening,
23 and a six-month complete physical examination. *See* Dkt. 532 at 30, 37. The 14-day
24 health screening must be completed using the Health Inventory & Communicable Disease
25 Screening Form, attached to the Implementation Plan as Exhibit E, and staff must record
26 the patient’s “[t]emperature, pulse, respirations, blood pressure, height and weight,” assess
27 for possible sexually transmitted diseases, and note all positive findings on a “problem list”
28 for follow-up. *See id.* at 35, 129-30 (Health Inventory & Communicable Disease

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1 Screening form). The six-month physical examination must include “[r]eview of the
2 health inventory and communicable disease screening; [v]ital signs, height and weight;
3 [a] full body system review and assessment ...; [a] documented assessment of the
4 individual’s health status; [and a] plan for follow up, treatment and referral as indicated.”
5 *Id.* at 37.

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28 36. **Continuity of Care.** Wellpath’s Implementation Plan requires that

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1 “[p]atients will receive continuity of care from admission to discharge while in this
2 facility, including referral to community care when indicated.” Dkt. 532 at 38. “Inmates
3 released to the community will be provided with written instructions for the continuity of
4 essential care, including, but not limited to, name and contact information of community
5 providers for follow up appointments, prescriptions and/or adequate supply of medication
6 for psychiatric patients.” *Id.* at 38-39.

7 37. [REDACTED]
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22 38. **Outside Care Referrals.** Wellpath’s Implementation Plan provides that
23 “[i]nmates will have access to outside health care providers.” Dkt. 532 at 39. The
24 Settlement Agreement provides that all “records, results, and orders received from [such]
25 off-site consultations and treatment” be maintained in the patient’s medical record.
26 Dkt. 494 at 17.

27 39. [REDACTED]
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18 40. **Treatment of Intoxicated Patients.** The Settlement Agreement requires
19 that “[m]edical providers shall be timely involved in assessing and treating inmates
20 potentially undergoing withdrawal, and non-provider medical staff shall timely refer to
21 providers those inmate undergoing withdrawals when clinically indicated.” Dkt. 494 at
22 14-15. Wellpath’s Implementation Plan enumerates numerous specific requirements for
23 the identification and treatment of patients in a state of alcohol or drug intoxication, or
24 withdrawal. See Dkt. 532 at 18, 48-71.

25 41. [REDACTED]
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1 policies and practices were inadequate, yet did nothing to improve them, creating an
2 “unacceptably high” risk of infection for the Plaintiff class). The Settlement Agreement
3 further provides that “Defendants’ tuberculosis identification, control and treatment
4 program shall comply with [U.S. Centers for Disease Control and Prevention (“CDC”)
5 guidelines],” and that “Defendants shall have a reliable system to track whether all newly
6 booked inmates have received tuberculosis screening and appropriate follow-up testing and
7 treatment.” Dkt. 494 at 14. Wellpath’s Implementation Plan contains strict protocols for
8 the identification, control, and treatment of tuberculosis. *See generally* Dkt. 532 at 78-87.

9 43. [REDACTED]

10 [REDACTED]
11 [REDACTED]
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2 44. **Pharmaceutical Practices.** Wellpath’s Implementation Plan provides that
3 “[u]nder the direction of the Medical Director and in accordance with Pharmacy and
4 Business Code, the Medical Program Manager or their designee acting as an agent of the
5 Medical Director will procure, store, and manage pharmaceuticals for use in the Monterey
6 County Jail.” Dkt 532 at 94. “Containers which are cracked, soiled or without secure
7 closures shall not be used” and “[d]rug labels shall be legible.” *Id.* at 95. This includes
8 non-prescription medications, which must be provided “in unit dose, sealed, labeled
9 packaging.” *Id.* at 91. “Inmates on essential medications will receive medication while in
10 court.” *Id.* at 92. “Controlled substances will be kept under maximum security storage
11 and counted at each shift change” by “the nursing going off duty” together with “the nurse
12 coming on duty.” *Id.* at 93. “The medication nurse is responsible for and will verify”
13 whether each patients takes their prescribed medication, including by recording it “on the
14 inmate’s medication administration record (MAR).” *Id.* at 89. “If a prescribed substance
15 is refused or withheld, a notation will be made on the [MAR] and the prescribing medical
16 provider shall be notified after three consecutive refusals.” *Id.* at 89, 90.

17 45. [REDACTED]
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6 46. **Quality Assurance.** Wellpath’s Implementation Plan requires Wellpath to
7 engage in post-implementation monitoring, including “focused process[es] and outcome
8 audits to measure compliance with the elements of the [Wellpath] Implementation Plan.
9 Corrective action plans will be developed and instituted for identified deficiencies,
10 including re-audits within a stipulated time frame. All monitoring and audit findings will
11 be reported to the Quality Management Committee at its quarterly meetings.” Dkt. 532 at
12 9; *see also* Dkt. 494 at 11-12 (“[There must be] corrective action measures to address
13 lapses in application of the policy.”). Wellpath’s Implementation Plan also requires the
14 responsible physician to provide appropriate supervision of the PA, NP, and RNs.
15 Dkt. 532 at 24. The Plan further provides that “all completed suicides shall be subject to a
16 medical and psychiatric review and review by the Quality Management and Peer Review
17 Committees in accordance with [Wellpath] Inmate Deaths Policy and Procedure.” *Id.* at
18 77. Under the May 29, 2020 Stipulated Order, Wellpath must provide Plaintiffs’ counsel
19 access to death reviews of post-Settlement in-custody deaths within thirty days from the
20 date the review is completed. Dkt. 671 at 6.

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MENTAL HEALTH CARE MONITORING REPORTS

48. Attached hereto as **Exhibit 18** is a true and correct copy of Dr. Hughes’s finalized 1st Mental Health Report (toured January 18-19, 2017), undated and received by my firm on May 12, 2017 via an email sent by Dr. Hughes.

49. Alongside each finalized mental health monitoring report, the mental health monitors also provided a document with detailed records reviews for a subset of patients with mental illness and issued findings regarding the adequacy of their care. As identified below, these case review documented are attached hereto as separate exhibits for each finalized mental health monitoring report.⁴

50. Attached hereto as **Exhibit 19** is a true and correct copy of Dr. Hughes’s finalized 1st Records Review, received by my firm on February 27, 2017 via an email sent by Dr. Hughes.

51. Attached hereto as **Exhibit 20** is a true and correct copy of Dr. Hughes’s finalized 2nd Mental Health Report (toured November 14-15, 2017), undated and received by my firm on May 3, 2018 via an email sent by Dr. Hughes.

52. Attached hereto as **Exhibit 21** is a true and correct copy of Dr. Hughes’s

⁴ In conjunction with each of the case reviews, Dr. Hughes and Dr. Vess prepared a key identifying the incarcerated people discussed in the anonymized case reviews appended to the end of each of his reports. Because this patient-level information is protected by the Protective Order in this case (Dkt. 401), I am not attaching the patient keys to this declaration. All parties already have access to these keys, and Plaintiffs can make them available to the Court upon request.

1 finalized 2nd Records Review, received by my firm on May 3, 2018 via an email sent by
2 Dr. Hughes. The 2nd Records Review document as originally produced to Plaintiffs'
3 counsel contained numerous pages that appeared to be included in error. This included
4 duplicate pages, blank pages, and pages that appeared to be scrap paper (i.e., an illegibly
5 printed email, a receipt for an amazon purchase, and a blank nomination form for a
6 professional award). Plaintiffs' counsel has removed from the report all blank pages and
7 the pages that appeared to be scrap paper. We have not removed the duplicate pages, due
8 to the risk of removing important substantive components of the report.

9 53. Attached hereto as **Exhibit 22** is a true and correct copy of Dr. Hughes's
10 finalized 3rd Mental Health Report (toured July 10-11, 2018), undated and received by my
11 firm on December 5, 2018 via an email sent by Dr. Hughes.

12 54. Attached hereto as **Exhibit 23** is a true and correct copy of Dr. Hughes's
13 finalized 3rd Records Review, received by my firm on December 5, 2018 via an email sent
14 by Dr. Hughes.

15 55. Attached hereto as **Exhibit 24** is a true and correct copy of Dr. Hughes's
16 finalized 4th Mental Health Report (toured November 28-29, 2018), undated and received
17 by my firm on May 6, 2019 via an email sent by Dr. Hughes.

18 56. Attached hereto as **Exhibit 25** is a true and correct copy of Dr. Hughes's
19 finalized 4th Records Review, received by my firm on May 6, 2019 via an email sent by
20 Dr. Hughes.

21 57. Attached hereto as **Exhibit 26** is a true and correct copy of Dr. Hughes's
22 finalized 5th Mental Health Report (toured June 19-20, 2019), undated and received by my
23 firm on November 5, 2019 via an email sent by Dr. Hughes.

24 58. Attached hereto as **Exhibit 27** is a true and correct copy of Dr. Hughes's
25 finalized 5th Records Review, received by my firm on November 5, 2019 via an email sent
26 by Dr. Hughes.

27 59. Attached hereto as **Exhibit 28** is a true and correct copy of Dr. Hughes's
28 finalized 6th Mental Health Report (toured December 11-12, 2019), undated and received

1 by my firm on May 18, 2020 via an email sent by Dr. Hughes.

2 60. Attached hereto as **Exhibit 29** is a true and correct copy of Dr. Hughes's
3 finalized 6th Records Review, received by my firm on May 18, 2020 via an email sent by
4 Dr. Hughes.

5 61. Attached hereto as **Exhibit 30** is a true and correct copy of Dr. Hughes's
6 finalized 7th Mental Health Report (toured July 16 and 28-30 2020, and August 7 and 14,
7 2020), undated and received by my firm on March 9, 2021 via an email sent by
8 Dr. Hughes.

9 62. Attached hereto as **Exhibit 31** is a true and correct copy of Dr. Hughes's
10 finalized 7th Records Review, received by my firm on January 19, 2021 via an email sent
11 by Dr. Hughes.

12 63. Attached hereto as **Exhibit 32** is a true and correct copy of Dr. Hughes's
13 finalized 8th Mental Health Report (toured May 18-19, 2021), undated and received by my
14 firm on January 4, 2022 via an email sent by Dr. Hughes.

15 64. Attached hereto as **Exhibit 33** is a true and correct copy of Dr. Hughes's
16 finalized 8th Records Review, received by my firm on January 4, 2022 via an email sent
17 by Dr. Hughes.

18 65. Attached hereto as **Exhibit 34** is a true and correct copy of Dr. Vess's
19 finalized 9th Mental Health Report (toured July 21-22, 2022), undated and received by my
20 firm on November 4, 2022 via an email sent by Dr. Hughes.

21 66. Attached hereto as **Exhibit 35** is a true and correct copy of Dr. Vess's
22 finalized 9th Records Review, received by my firm on September 16, 2022 via an email
23 sent by Dr. Vess.

24 67. Attached hereto as **Exhibit 36** is a true and correct copy of the finalized
25 Mental Health CAP that was created by Wellpath and approved by Dr. Hughes as a result
26 of the Court's May 29, 2020 Order. *See* Dkt. 671 at 5-6.

27 **SUSTAINED NONCOMPLIANCE WITH MENTAL HEALTH REQUIREMENTS**

28 68. **Mental Health Staffing**. The Settlement Agreement requires Wellpath to

1 maintain adequate mental health staff sufficient to ensure compliance with the
2 Implementation Plan, and must evaluate its staffing levels on an ongoing basis. *See* Dkt.
3 494 at 16; Dkt. 532 at 116. [REDACTED]

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15 69. [REDACTED]
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28 70. **Initial Mental Health Screening.** Wellpath’s Implementation Plan requires

1 that “[w]ithin 14 days of admission ... all inmates will have an initial mental health
2 screening performed by a qualified mental health professional.” Dkt. 532 at 41; *id.* at 36
3 (same). The 14-day mental health screening must “consist of a structured interview” and
4 include inquiries into the patient’s “history of psychiatric hospitalizations and outpatient
5 treatments,” “[t]he current status of psychotropic medications, suicidal ideations, drug or
6 alcohol use and orientation to person place, and time,” and “[e]motional response to
7 incarceration.” *Id.* at 36. The medical or psychiatric provider who conducts the 14-day
8 mental health screening must “complete a baseline ... psychiatric examination,” order a
9 “therapeutic regimen, as appropriate,” and, if the patient is on psychiatric medications,
10 schedule the patient to be seen by the psychiatrist “every thirty days until determined
11 stable and then at least every 60 to 90 days.” *Id.* at 30-31.

12 71. [REDACTED]
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23 72. **Nursing Rounds in Administrative Segregation.** Wellpath’s
24 Implementation Plan provides that “[n]ursing staff shall conduct mental health rounds in
25 Administrative Segregation daily, separate and apart from medication distribution.”
26 Dkt. 532 at 43.

27 73. [REDACTED]
28 [REDACTED]

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10 74. **Hospital Transfers.** Wellpath’s Implementation Plan provides that “[a]ny
 11 inmate who has been placed in a safety cell for Suicide Precautions for 24 consecutive
 12 hours shall be transferred to either an appropriate inpatient mental health facility or the
 13 Natividad Medical Center emergency room for assessment.” Dkt. 532 at 75; *id.* at 43, 80.
 14 Patients must also transfer to an inpatient facility or NMC if they have been housed in a
 15 safety cell “for more than 36 cumulative hours in any 3-day period.” *Id.* at 73. Individuals
 16 placed into a safety cell at intake due to a positive mental health screening must be
 17 transferred to NMC for further assessment if their “condition deteriorates,” or if “the nurse
 18 is unable to complete a hands-on assessment including vital signs after six hours of
 19 placement.” *Id.* at 16.

20 75. [REDACTED]
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76. **Treatment Planning**. Wellpath’s Implementation Plan states:

Individual treatment plans shall be developed by the responsible mental health provider and the Program Manager or designee to meet the outpatient treatment needs of the inmate during his/her period of incarceration including the opportunity for social interaction and participation in community activities. If the inmate is unable to participate, the reason will be documented by the responsible mental health professional.

Dkt. 532 at 43; *id.* at 27, 75 (additional treatment plan requirements). Initial treatment planning must begin at the time of intake by the booking nurse, and must “include [the] specific medical and/or psychiatric problem, nursing interventions, housing, dietary, medication, observation and monitoring, and follow-up referral and/or evaluation as appropriate.” *Id.* at 27. An individualized treatment plan must be documented in each patient’s medical record. *Id.* at 114. When a psychiatric provider sees patients with chronic mental health conditions at the chronic care clinic, they must, among other things, assess the patient’s “compliance with [the] treatment plan and clinical status in comparison to [the] prior visit.” *Id.* at 32.

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6 78. **Chronic Care.** Wellpath’s Implementation Plan requires that “[i]nmates
7 with chronic medical conditions will be referred to and seen by a medical provider within
8 five to seven days of arrival.” Dkt. 532 at 14; *id.* at 29. The Plan defines “[c]hronic
9 illness” as including “psychiatric disorders.” *Id.* at 28. After intake, patients with chronic
10 conditions must be evaluated “at least every ninety days.” *Id.* at 28, 31. The psychiatric
11 provider conducting the chronic care clinic must, at minimum, (1) assess the patient’s
12 history, (2) conduct a physical examination, (3) assess the patient’s diagnosis and
13 “compliance with [the] treatment plan,” (4) create a treatment plan, including conducting
14 laboratory and diagnostic tests, implementing “[s]trategies to improve outcomes,”
15 monitoring vital signs, educating the patient, and discharge planning, and (5) document the
16 encounter in the patient’s medical record. *Id.* at 32-33.

17 79. [REDACTED]
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2 80. Acute Care. The Settlement Agreement provides that Defendants shall
3 “ensure timely access to ... hospitalization and inpatient care.” Dkt. 494 at 17. Wellpath’s
4 Implementation Plan requires that “[i]nmates who require acute mental health services
5 beyond those available on site are transferred to an appropriate facility.” Dkt. 532 at 36;
6 *id.* at 41, 42.

7 81. [REDACTED]
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82. **Outpatient Services.** Wellpath’s Implementation Plan states that “[o]utpatient mental health services to include screening, evaluation, diagnosis, treatment and referral services shall be available to all inmates in the Monterey County Jail.” Dkt. 532 at 41. “Inmates requiring special in-jail housing and/or observation for psychiatric reasons will be housed in single cells and/or the Outpatient Housing Unit ...” *Id.* at 42. Wellpath’s Implementation Plan further provides:

Individual treatment plans shall be developed by the responsible mental health provider and the Program Manager or designee to meet the outpatient treatment needs of the inmate during his/her period of incarceration including the opportunity for social interaction and participation in community activities. If the inmate is unable to participate, the reason will be documented by the responsible mental health professional

Id. at 43.

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17 84. Psychiatric Follow-Up Visit Intervals. Wellpath’s Implementation Plan
18 requires that “patient[s] on psychiatric medications will be seen by the psychiatrist every
19 thirty days until determined stable and then at least every sixty/ninety days. More frequent
20 evaluations by a psychiatrist will be scheduled if necessitated by the patient’s condition.”
21 Dkt. 532 at 31.

22 85. [REDACTED]
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11 86. Consideration of Mental Health in Discipline. Wellpath’s Implementation
 12 Plan provides:

13 Mental illness will be considered in administering any disciplinary measures
 14 against an inmate. Custody staff shall contact the appropriate qualified
 15 mental health care staff when evaluating the level of discipline for an
 inmate with mental illness.

16 Dkt. 532 at 47.

17 87. [REDACTED]
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1 88. **Segregation Placement Screenings.** The Settlement Agreement provides:

2 The Mental Health Implementation Plan shall require placement screening of
3 all prisoners for mental illness and suicidality before or promptly after they
4 are housed in administrative segregation, and require procedures to mitigate
5 the impact of administrative segregation on persons with mental illness,
6 including but not limited to structured therapeutic activity outside the
7 segregation cell and where feasible assignment of cell mates.

6 Dkt. 494 at 17-18. Wellpath’s Implementation Plan similarly provides:

7 A suicide risk assessment, including use of the Suicide Risk Assessment
8 Tool, a copy of which is attached as Exhibit G, will be performed by a
9 qualified mental health provider ... after placement in Administrative
10 Segregation. Any qualified mental health provider who performs a suicide
11 risk assessment will be trained in the use and interpretation of the Suicide
12 Risk Assessment Tool.

11 Dkt. 532 at 43.

12 89. [REDACTED]
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25 90. **Mental Health Programming in Segregation.** The Settlement Agreement

26 mandates that “[t]he Mental Health Implementation Plan shall require ... procedures to
27 mitigate the impact of administrative segregation on persons with mental illness, including
28 but not limited to structured therapeutic activity outside the segregation cell.” Dkt. 494, at

[4291382.1]

1 17-18. Wellpath’s Implementation Plan requires, in relevant part, that “Mental Health
2 services provided on-site will include ... socialization programs, group therapy, ...
3 psychiatric evaluations and individual therapy.” Dkt. 532 at 42.

4 91. [REDACTED]
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16 [REDACTED]
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19 92. **Involuntary Medication.** Wellpath’s Implementation Plan provides:

20 Involuntary psychotropic medications will only be given when a
21 psychiatric emergency exists or when an inmate, following an[] Incapacity
22 Hearing, is found to lack the capacity to consent to medications.
23 Medications shall not be used for punishment, for the convenience of staff,
24 as a substitute for program, or in quantities that interfere with the treatment
25 program. The responsible physician, Program Manager and Director of
26 Nursing in cooperation with the Facility Manager will be responsible for
27 identifying appropriate community resources and developing procedures
28 to obtain an Incapacity Hearing and to transfer inmates requiring
involuntary psychotropic medication administration to an appropriate
community facility.

Dkt. 532 at 96. The Plan defines “psychiatric emergency” as a situation where involuntary
treatment is “immediately necessary for the preservation of life or the prevention of serious

[4291382.1]

1 bodily harm to the inmate or others.” *Id.* Involuntary psychotropic medications may only
2 be given pursuant to a “one-time order from the responsible facility psychiatrist or
3 physician following an on-site evaluation.” *Id.* Patients who receive involuntary
4 psychotropic medications must be admitted to the infirmary or a safety cell and must be
5 monitored by custody staff at least every 30 minutes. *Id.* at 97. “Monitoring by nursing
6 staff will be provided at a minimum of every 15 minutes for the first hour and every 30
7 minutes thereafter” *Id.* Any patient “exhibiting any clinical deterioration ... will be
8 transferred immediately to a clinically appropriate treatment facility.” *Id.*

9 93. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 94. **Suicide Risk Assessments.** Under Wellpath’s Implementation Plan, suicide
22 risk assessments may only be performed by qualified mental health providers who are
23 “trained in the use and interpretation of the Suicide Risk Assessment Tool.” *See* Dkt. 532
24 at 43. Such assessments must occur at intake if suicidality is identified, prior to placement
25 in segregation, within four hours after placement in a safety cell, and before release from a
26 safety cell. *Id.*; *see also id.* at 72-73, 75.

27 95. [REDACTED]

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96. **Medical Records.** Wellpath’s Implementation Plan requires that each patient’s medical record contain the following items, as applicable:

1. The completed Receiving Screening form.
2. Health Inventory/Communicable Disease Screening forms.
3. Problem list.
4. All findings, diagnosis, treatments, dispositions.
5. Prescribed medications and their administration.
6. Laboratory, x-ray and diagnostic studies.
7. Consent and Refusal forms.
8. Release of Information forms.
9. Place and date of health encounters (time, when pertinent).
10. Health service reports (i.e., dental, psychiatric, and other consultations).
11. Hospital Discharge Summaries.
12. Jail Medical Record Summaries (transfer forms).
13. Individual treatment plan

Dkt. 532 at 114.

97. [REDACTED]

98. **Corrective Action Plans.** The Settlement Agreement states that “[t]o ‘implement’ a policy means that ... compliance with the policy is monitored and tracked, ... the policy is consistently applied; and there are corrective action measures to address lapses in application of the policy.” Dkt. 494 at 11-12. Wellpath’s Implementation Plan provides that Wellpath will engage in post-implementation monitoring, including “focused process[es] and outcome audits to measure compliance with the elements of the [Wellpath]

[4291382.1]

1 Implementation Plan. Corrective action plans will be developed and instituted for
2 identified deficiencies, including re-audits within a stipulated time frame.” Dkt. 532 at 9.
3 The May 29, 2020 Stipulated Order required Wellpath to “develop, under the direction and
4 guidance of the neutral monitors and with input from Plaintiffs’ counsel, corrective action
5 plans to remedy all the areas for which the neutral monitors have found Defendants to be
6 not in substantial compliance.” Dkt. 671 at 5.

7 99. [REDACTED]
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12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
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19 [REDACTED]

20 100. **Provider Visits to Holding and Isolation Cells.** Wellpath’s
21 Implementation Plan requires that “[i]nmates housed in holding and isolation are visited
22 by an MD or an RN every Monday, Wednesday and Friday.” Dkt. 532 at 26.

23 101. [REDACTED]
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26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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3 102. **Quality Assurance.** Wellpath must conduct quarterly Quality Management
4 Committee meetings to assess their compliance with Wellpath’s Implementation Plan, and
5 to develop and institute corrective actions for identified deficiencies. Dkt. 532 at 9. “All
6 cases involving the need for involuntary psychiatric medication administration will be
7 reviewed by the Quality Management Committee to evaluate the appropriateness of
8 treatment, the process and whether or not the criteria for psychiatric emergency were met.”
9 *Id.* at 98. Additionally, “[a]ll completed suicides shall be subject to a medical and
10 psychiatric review and review by the Quality Management and Peer Review Committees
11 in accordance with [Wellpath’s] Inmate Deaths Policy and Procedure.” *Id.* at 77. Under
12 the May 29, 2020 Stipulated Order, Wellpath must provide Plaintiffs’ counsel access to
13 death reviews of post-Settlement in-custody deaths within thirty days from the date the
14 review is completed. Dkt. 671 at 6.

15 103. [REDACTED]
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10 **DENTAL CARE MONITORING REPORTS**

11 104. Attached hereto as **Exhibit 38** is a true and correct copy of Dr. Winthrop’s
12 finalized 1st Dental Report (toured February 2-3, 2017), dated April 30, 2017 and received
13 by my firm on May 1, 2017 via an email sent by Dr. Winthrop.

14 105. Attached hereto as **Exhibit 39** is a true and correct copy of Dr. Winthrop’s
15 finalized 2nd Dental Report (toured May 4-5, 2017), dated September 29, 2017 and
16 received by my firm on October 5, 2017 via an email sent by Dr. Winthrop.

17 106. Attached hereto as **Exhibit 40** is a true and correct copy of Dr. Winthrop’s
18 finalized 3rd Dental Report (toured December 6-7, 2017, with a re-evaluation May 8-9,
19 2018), dated May 9, 2018 and received by my firm on June 11, 2018 via an email sent by
20 Dr. Winthrop.

21 107. Attached hereto as **Exhibit 41** is a true and correct copy of Dr. Winthrop’s
22 finalized 4th Dental Report (toured December 5-6, 2018, with a re-evaluation May 21-22,
23 2019), dated November 30, 2019 and received by my firm on December 2, 2019 via an
24 email sent by Dr. Winthrop.

25 108. Attached hereto as **Exhibit 42** is a true and correct copy of Dr. Winthrop’s
26 finalized 5th Dental Report (toured June 15-16, 2020), dated October 30, 2020 and
27 received by my firm on November 8, 2020 via an email sent by Dr. Winthrop.

28 109. Attached hereto as **Exhibit 43** is a true and correct copy of Dr. Winthrop’s

[4291382.1]

1 finalized 6th Dental Report (toured May 4-5, 2021), dated August 15, 2021 and received
2 by my firm on August 16, 2021 via an email sent by Dr. Winthrop.

3 110. Attached hereto as **Exhibit 44** is a true and correct copy of Dr. Winthrop's
4 finalized 7th Dental Report (toured January 11-12, 2022), dated June 17, 2022 and
5 received by my firm on June 17, 2022 via an email sent by Dr. Winthrop.

6 111. Attached hereto as **Exhibit 45** is a true and correct copy of Dr. Winthrop's
7 finalized 8th Dental Report (toured May 24-25, 2022), dated November 21, 2022 and
8 received by my firm on that date via an email sent by Dr. Winthrop. Dr. Winthrop
9 separately recorded her findings in specific areas of dental care in her 8th Dental Audit
10 Tool, attached hereto as **Exhibit 46** are true and correct copies of relevant excerpts of this
11 document.⁵

12 112. Attached hereto as **Exhibit 47** is a true and correct copy of Dr. Winthrop's
13 draft 9th Dental Report (toured December 5-6, 2022), dated March 21, 2023 and received
14 by my firm on that date via an email sent by Dr. Winthrop. Dr. Winthrop separately
15 recorded her findings in specific areas of dental care in her 9th Dental Audit Tool; attached
16 hereto as **Exhibit 48** are true and correct copies of relevant excerpts of this document.
17 Plaintiffs plan to update their Enforcement Motion and this declaration once Dr. Winthrop
18 finalizes her 9th Dental Report.

19 113. Attached hereto as **Exhibit 49** is a true and correct copy of the finalized
20 Dental CAP that was created by Wellpath and approved by Dr. Winthrop as a result of the
21 Court's May 29, 2020 Order. *See* Dkt. 671.

22 **SUSTAINED NONCOMPLIANCE WITH DENTAL REQUIREMENTS**

23 114. **Dental Staffing**. The Settlement Agreement requires Wellpath to maintain
24

25 _____
26 ⁵ Dr. Winthrop's audit tools, which were also provided to Wellpath, are voluminous and
27 therefore only relevant excerpts are attached hereto. Plaintiffs can make the full audit tools
28 available to the Court upon request.

1 adequate mental health staff sufficient to ensure compliance with the Implementation Plan,
2 and must evaluate its staffing levels on an ongoing basis. *See* Dkt. 494 at 16; Dkt. 532 at
3 116. [REDACTED]

4 [REDACTED]
5 [REDACTED]

6 115. [REDACTED]
7 [REDACTED]
8 [REDACTED]
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[REDACTED]

116. **Intake Screening**. The Settlement Agreement requires Defendants to specify “standards and timelines to ensure that arriving prisoners are promptly screened for

1 urgent ... dental needs, with prompt follow-up.” Dkt. 494 at 13. The Settlement
2 Agreement further provides that “Defendants shall develop and implement a Dental Care
3 Implementation Plan to ensure timely access to necessary treatment for dental and oral
4 health conditions, including but not limited to Intake Screening.” *Id.* at 18. Wellpath’s
5 Implementation Plan requires that: “A qualified health care professional who has been
6 trained by the dentist shall obtain a dental history regarding any current or recent dental
7 problems, treatment including medications during the Receiving Health Screening at
8 intake with follow up to positive findings.” Dkt. 532 at 99. Wellpath’s Implementation
9 Plan further requires that: “If the medical staff/licensed health care professional determines
10 the dental issue to be urgent, the patient shall be referred to and evaluated by the dentist at
11 the next scheduled dental clinic.” *Id.* at 100.

12 117. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 118. **Initial Health Inventory.** Wellpath’s Implementation Plan requires that “[a]
26 complete gender specific health history inventory and communicable disease screening
27 shall be completed on all inmates within 14 days of arrival at the facility by a Registered
28 Nurse who has completed appropriate training that is approved or provided by the

1 responsible physician.” Dkt. 532 at 33-34. [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED] Wellpath’s Implementation Plan provides further requirements concerning
5 the 14-day exam:

6 A qualified health care professional who has been trained by the dentist shall
7 ... perform an initial health screening on each inmate at the time of the
8 health inventory and communicable disease screening, the general condition
9 of the patient's dentition, missing or broken teeth, evidence of gingival
10 disease, mucosal lesions, trauma, infection, facial swelling, exudate
11 production, difficulty swallowing, chewing and/or other functional
impairment will be noted; urgent/emergent dental needs identified. All
screening findings will be documented on the health inventory form
including the odontogram. Follow up referral and/or consultation with onsite
or on call medical provider and/or dental provider (if onsite) will determine
treatment plan and schedule for initial provider evaluation.

12 Dkt. 532 at 99.

13 119. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
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26 [REDACTED]
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[4291382.1]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 120. **Dental Training for Intake Staff.** Wellpath’s Implementation Plan states:

6 All CFMG health services staff will participate in classroom orientation and
7 training regarding compliance with all aspects of [Wellpath’s]
8 Implementation Plan. Orientation and training will be conducted by a
qualified health services instructor. Counseling, training or appropriate
discipline may ensue from failure to comply with the Implementation Plan.

9 Dkt. 532 at 9. The Plan further provides that the registered nurse who performs the intake
10 screening and the 14-day dental evaluation during the initial health history must be trained
11 by the dentist. *Id.* at 99.

12 121. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 122. **Treatment for Urgent and Emergent Conditions.** Wellpath’s
23 Implementation Plan requires that when a patient is found in the initial health screening to
24 be experiencing a dental emergency, and “a licensed dentist is not present, the patient will
25 be seen, treated and managed immediately by medical provider staff.” Dkt. 532 at 99. If
26 “the acute dental emergency is life threatening, the patient will be transported to an urgent
27 care facility or hospital.” *Id.* at 99-100. If the dental issue is found “to be urgent, the
28 patient shall be referred to and evaluated by the dentist at the next scheduled dental clinic.”

[4291382.1]

1 *Id.* at 100. The Implementation Plan further requires Wellpath to give its highest treatment
2 priority to “[r]elief of pain and treatment of acute infections and other urgent conditions.”
3 *Id.* The Implementation Plan also requires “Emergency Care (Immediate Treatment)” for
4 any “acute oral or maxilla-facial condition, which is likely to remain acute, worsen, or
5 become life threatening without immediate intervention,” as well as treatment within one
6 calendar day for patients “with a dental condition of sudden onset or severe pain, which
7 prevents them from carrying out essential activities of daily living.” *Id.* at 102. It
8 additionally requires treatment within 30 days for patients with “a sub-acute hard or soft
9 tissue condition that is likely to become acute without early intervention,” *id.* at 103, [REDACTED]

10 [REDACTED]
11 123. [REDACTED]
12 [REDACTED]
13 [REDACTED]
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10 124. **Dental Sick Call.** Wellpath’s Implementation Plan requires that:

11 All dental complaints are assessed, provided treatment for obvious infection
 12 and pain relief at regularly scheduled medical sick call by the MD, PA or RN
 13 to be seen within one day of the request. The complaint is prioritized and
 referred to Dental Sick call as deemed necessary. Interim treatment for pain
 and infection is provided until the patient is seen by the dentist.

14 Dkt. 532 at 102.

15 125. [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
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6 [REDACTED]

7 126. **Chronic Care.** Wellpath’s Implementation Plan requires that “[i]nmates
8 with chronic care conditions will be managed pursuant to chronic care protocols and
9 standardized procedures that are consistent with national practice guidelines.” Dkt. 532
10 at 28. Pursuant to the Court’s May 2020 Order (Dkt. 671), Wellpath created a dental care
11 CAP, which was approved by Dr. Winthrop, that required Wellpath [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 127. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 128. **Comprehensive Care.** The Settlement Agreement requires Wellpath “to
28 ensure timely access to necessary treatment for dental and oral health conditions, including

1 ... periodic dental care for long-term prisoners.” Dkt. 494 at 18. Wellpath’s
2 Implementation Plan requires that: “Inmates incarcerated for 12 months or greater are
3 eligible to receive a comprehensive dental exam. The purpose of the dental examinations
4 shall be for the identification, diagnosis, and treatment of dental pathology which impacts
5 the health and welfare of inmate patients.” Dkt. 532 at 104. Wellpath’s Implementation
6 Plan further requires that “[e]xamination findings and proposed treatment plan will be
7 documented on standardized comprehensive dental exam, periodontal exam and treatment
8 planning forms which will be filed in the patient medical record.” *Id.*

9 129. [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 130. **Restorative and Palliative Care.** Wellpath’s Implementation Plan requires
22 that patients “with comprehensive examinations and treatment plans” must be “eligible to
23 receive permanent restorations in accordance with their established treatment plan.”
24 Dkt. 532 at 107. The Plan further requires dental staff to verify that patients have received
25 the Dental Material Fact Sheet “[p]rior to initiating any restorative procedure.” *Id.* at 108.

26 131. [REDACTED]
27 [REDACTED]
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132. Extractions. Wellpath’s Implementation Plan requires dental staff to “provide necessary oral surgery services to all inmate-patients onsite or through a local community provider.” Dkt. 532 at 101. The Plan also requires Wellpath to provide “[e]xtraction of unsalvageable teeth” as a treatment priority. *See id.* at 100-01.

133. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 134. **Specialty Care Referrals.** Wellpath’s Implementation Plan requires
3 Wellpath to “provide necessary oral surgery services to all inmate-patients onsite or
4 through a local community provider.” Dkt. 532 at 101. “Complicated dental problems”
5 must be “referred to an oral surgeon as deemed necessary.” *Id.* at 103. The Plan also
6 requires that “[r]eferral to and priority of offsite oral surgeon” must be conducted in
7 accordance with the timelines and treatment priorities required by the Implementation
8 Plan. *Id.* at 102. For root canal services, procedures that “cannot be accomplished by
9 [Wellpath’s] dentist at MCJ will be referred to a contracted dentist in the outside facility”
10 and that “[a] local contract dentist will be available for referral when in the opinion of the
11 treating dentist the procedure could be handled more predictably by an endodontic
12 specialist.” *Id.* at 109-10. Patients with failing dental implants “shall be referred to a
13 dental specialist experienced in the management and placement of dental implants” for
14 evaluation. *Id.* at 112.

15 135. [REDACTED]
16 [REDACTED]
17 [REDACTED]
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[REDACTED]

136. **Endodontics**. Wellpath’s Implementation Plan requires that all patients at the Jail must be “eligible to receive palliative endodontic therapy limited to upper and lower anterior teeth.” Dkt. 532 at 109. Individuals incarcerated for 12 months or longer must also be “eligible to receive root canal therapy limited to upper and lower anterior teeth.” *Id.* Both palliative endodontic therapy and root canal treatments must be “performed in accordance with established criteria and within the specific guidelines” of the Implementation Plan. *Id.* The Implementation Plan imposes a series of requirements for when and how these procedures must be performed. *Id.* at 109-10.

137. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

138. **Periodontics**. Wellpath’s Implementation Plan requires that: “MCJ will maintain a periodontal disease program for the diagnosis and treatment of periodontal disease. Periodontal screening shall be available to all patients, regardless of length of stay. Treatment will be based on periodontal disease classification, Dental Priority code, and special medical needs (i.e. pregnancy, diabetes, HIV/AIDS).” Dkt. 532 at 104.

139. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]

1 140. **Informed Consent.** Wellpath’s Implementation Plan contains numerous
2 provisions concerning informed consent related to dental procedures. *See* Dkt. 532 at 21
3 (“Written informed consent shall be obtained for all invasive and other procedures in
4 accordance with established [Wellpath] procedure and community standards of practice”);
5 23 (“Inmates retain all the recognized rights of an ordinary citizen relative to informed
6 consent and self-determination of health care”); 108 (“[Wellpath] dental staff shall verify
7 that every patient has received a copy of the Dental Materials Fact Sheet. Prior to
8 initiating any restorative procedure the patient shall sign the Acknowledgment of Receipt
9 of Dental Material Fact Sheet. This signature acknowledges acceptance of possible risks,
10 denial of alternate procedures, and consents to the proposed procedure and use of the
11 materials as recorded in the dental record.”); 110 (“A Consent for Root Canal Treatment
12 Form must be completed by the dentist and signed by the patient and witness (dentist)
13 prior to the provision of root canal treatment”); 112 (Wellpath “shall obtain informed
14 consent from all inmates who request removal of orthodontic bands/brackets and
15 discontinuation of their orthodontic treatment”); 114 (“The health record of an inmate
16 contains the following items as applicable to his/her case: ... Consent and Refusal forms”).

17 141. [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 142. **Sanitary Treatment Space.** The Settlement Agreement requires “a safe and
28 sanitary on or off-site facility for necessary dental care.” Dkt. 494 at 18. Wellpath’s

[4291382.1]

1 Implementation Plan similarly requires that “[a]ll dental services will be provided in a safe
2 and sanitary environment.” Dkt. 532 at 99.

3 143. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
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15 [REDACTED]
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19 [REDACTED]

20 144. **Medical Records**. The Settlement Agreement requires Defendants to ensure
21 “that appropriate and complete medical records are maintained to ensure adequate
22 treatment of prisoners’ serious medical and mental health needs. Medical records shall
23 include all records, results, and orders received from off-site consultations and treatment
24 conducted while the prisoner is in the Jail custody.” Dkt. 494 at 17. Wellpath’s
25 Implementation Plan requires that: “Health care staff will use the [electronic medical
26 record] to closely track all requests for health care including the date of submission, date of
27 triage, date of evaluation, disposition and date of any necessary follow-up care. ... The
28 [electronic medical record] will identify any inmates who require Chronic Disease

[4291382.1]

1 Management and health care staff will use it to closely track the condition/s that need to be
2 monitored, the nature of the treatment required and the frequency of any required follow-up
3 care.” Dkt. 532 at 113. Wellpath’s Implementation Plan also provides for a “Dental Priority
4 System” that determines when patients will be seen for immediate treatment or treatment
5 within 1, 30, 60, or 120 days, with scheduling for follow up appointments. *Id.* at 103.

6 145. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
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13 [REDACTED]
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[REDACTED]

146. Dental Quality Assurance. Wellpath’s Implementation Plan requires “[a]ll monitoring and audit findings” to be “reported to the Quality Management Committee at its quarterly meetings.” Dkt. 532 at 9. The Dental CAP further requires that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

147. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

DOCUMENTS RELATED TO RECENT DEATHS

148. Attached hereto as **Exhibit 50** is a true and correct copy of Wellpath’s

[4291382.1]

1 electronic medical records file for M.M., who died by suicide on January 4, 2023 (“M.M.
2 CorEMR File”), that I received via email from Peter Bertling, counsel for Wellpath, on
3 January 23, 2023.

4 149. Attached hereto as **Exhibit 51** is a true and correct copy of the County’s
5 custodial records for M.M. (“M.M. Custody Records”), which I received via email from
6 Susan K. Blich, counsel for the County, on January 9, 2023.

7 150. Attached hereto as **Exhibit 52** is a true and correct copy of Wellpath’s
8 psychological autopsy report regarding M.M.’s suicide (“M.M. Psychological Autopsy”),
9 that I received via email from Mr. Bertling on March 29, 2023.

10 151. Attached hereto as **Exhibit 53** is a true and correct copy of an email that I
11 received from Dr. Barnett on January 19, 2023 regarding M.M.’s death.

12 152. Attached hereto as **Exhibit 54** is a true and correct copy of relevant excerpts
13 NMC’s electronic medical records file for D.S., who died at the Jail on November 12,
14 2022 (“D.S. NMC Records”), that was mailed to my firm by Anne K. Brereton, counsel for
15 NMC, and received on December 7, 2022.

16 153. Attached hereto as **Exhibit 55** is a true and correct copy of Wellpath’s
17 electronic medical records file for D.S. (“D.S. CorEMR File”), that I received via email
18 from Stephanie Aguiniga, a colleague of Mr. Bertling, on December 5, 2022.

19 154. Attached hereto as **Exhibit 56** is a true and correct copy of the Jail’s
20 October 2022 Special Conditions List, which I received via email from Ms. Blich on
21 November 10, 2022, as part of the County’s monthly document production.

22 155. Attached hereto as **Exhibit 57** is a true and correct copy of the Jail’s incident
23 reports regarding D.S.’s death, which I received via email from Angélica Brito, a colleague
24 of Ms. Blich, on December 12, 2022, as part of the County’s monthly document
25 production.

26 156. Attached hereto as **Exhibit 58** are true and correct copies of photographs I
27 received from Ellen Lyons, counsel for the County, on April 7, 2023, showing the inside of
28 D.S.’s cell after his death.

1 157. Attached hereto as **Exhibit 59** is a true and correct copy of the autopsy report
2 regarding D.S.’s death (“D.S. Autopsy Report”), that I received via email from Ms. Lyons
3 on March 6, 2023.

4 158. Attached hereto as **Exhibit 60** is a true and correct copy of Wellpath’s
5 suicide safety gap analysis regarding J.C., who died by suicide at the Jail on April 20, 2022
6 (“J.C. Suicide Safety Gap Analysis”), that I received via email from Mr. Bertling on
7 November 1, 2023.

8 **RECENT DEATHS INVOLVING AREAS OF SUSTAINED NONCOMPLIANCE**

9 159. J.H. died at the Jail on the afternoon of April 7, 2023. Erick Stewart, an
10 incarcerated person who lived in J.H.’s cell block, stated that Mr. Hall had trouble
11 breathing at night and used a CPAP machine before he was transferred to the Jail from a
12 facility in another state. *See* Decl. of Erick Stewart in Supp. of Pls.’ Mot. to Enforce
13 Settlement Agreement and Wellpath Implementation Plan, filed concurrently here with
14 (“Stewart Decl.”), ¶¶ 4-5. Mr. Stewart stated that J.H. requested a CPAP machine before
15 he died, but Wellpath did not provide him one. *Id.* Mr. Stewart stated that on the night
16 before J.H.’s death, J.H. woke up gasping for air, and told Mr. Stewart in the morning that
17 he felt he had nearly died. *Id.* ¶ 6. Mr. Stewart stated that staff discovered J.H.
18 nonresponsive in his cell a few hours later. *Id.* ¶¶ 8-12. Given the recency of J.H.’s death,
19 the medical and mental health monitors are still actively reviewing this case, including the
20 cause of death.

21 160. M.M. committed suicide on January 4, 2023, at the age of 45. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED] The Implementation Plan
27 states that psychosis, anger, drug dependency, being under the influence, and being
28 charged with a serious crime are all signs of suicide risk. *See* Dkt. 532 at 134-35. [REDACTED]

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[REDACTED]

161. [REDACTED]

[REDACTED]

162. D.S. was 29 years old when he died at the Jail on November 12, 2022. [REDACTED]

[REDACTED]

The Implementation Plan requires Wellpath to ensure that individuals' psychiatric prescriptions are identified and continued. *See* Dkt. 532 at 17-19. [REDACTED]

[REDACTED]

163. [REDACTED]

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[REDACTED]

164. [REDACTED]

[REDACTED]

165. J.C. died by suicide at the Jail on April 20, 2022, at the age of 39.

[REDACTED], and the Implementation Plan requires that such patients receive staggered checks twice every 30 minutes to confirm signs of life. Dkt. 532 at 74. [REDACTED]

166. [REDACTED]

[REDACTED]

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[REDACTED]

167. S.G. was 39 years old when he died at the Jail on September 24, 2021. [REDACTED]

[REDACTED]

168. [REDACTED]

[REDACTED]

169. T.P. died by suicide in his cell on August 5, 2021, at the age of 62. [REDACTED]

[REDACTED]

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[REDACTED]

170. [REDACTED]

171. C.R. was 22 years old when he died by suicide in March 2021, [REDACTED]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration is executed at Walnut Creek,

1 California this 11th day of May, 2023.

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Cara E. Trapani

Cara E. Trapani

Exhibits 1-49
Filed Conditionally
Under Seal
Per Civ. L.R. 79-5(f)

Exhibits 50-52
Entire Documents Sought
to Be Sealed
Per Civ. L.R. 79-5(c)

Exhibit 53
Filed Conditionally
Under Seal
Per Civ. L.R. 79-5(f)

Exhibits 54-58
Entire Documents Sought
to Be Sealed
Per Civ. L.R. 79-5(c)

Exhibit 59
Filed Conditionally
Under Seal
Per Civ. L.R. 79-5(f)

Exhibit 60
Entire Document Sought
to Be Sealed
Per Civ. L.R. 79-5(c)