| 1 2 3 4 5 6 7 8 | MICHAEL W. BIEN – 096891 ERNEST GALVAN – 196065 VAN SWEARINGEN – 259809 CARA E. TRAPANI – 313411 CAROLINE E. JACKSON – 329980 ROSEN BIEN GALVAN & GRUNFELD LLP 101 Mission Street, Sixth Floor San Francisco, California 94105-1738 Telephone: (415) 433-6830 Facsimile: (415) 433-7104 Email: mbien@rbgg.com egalvan@rbgg.com vswearingen@rbgg.com ctrapani@rbgg.com | AVRAM D. FREY (admitted pro hac vice) AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC. 39 Drumm Street San Francisco, California 94111-4805 Telephone: (415) 621-2493 Facsimile: (415) 255-8437 Email: afrey@aclunc.org |
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| 9 110 111 112 113 114 115 | cjackson@rbgg.com CORENE KENDRICK – 226642 KYLE VIRGIEN – 278747 NATIONAL PRISON PROJECT of the AMERICAN CIVIL LIBERTIES UNION 39 Drumm Street San Francisco, California 94111-4805 Telephone: (202) 393-4930 Facsimile: (202) 393-4931 Email: ckendrick@aclu.org kvirgien@aclu.org Attorneys for Plaintiffs | |
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| 19 20 21 22 23 24 25 26 | JESSE HERNANDEZ et al., on behalf of themselves and all others similarly situated, Plaintiffs, v. COUNTY OF MONTEREY; MONTEREY COUNTY SHERIFF'S OFFICE; CALIFORNIA FORENSIC MEDICAL GROUP, INCORPORATED, a California corporation; and DOES 1 to 20, inclusive, Defendants. | 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 |
| 27 28 | [4291382.1] | 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

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

- 2. After approving the parties' Settlement Agreement and the Implementation Plans developed by the County of Monterey and Wellpath, Inc. ("Wellpath," formerly California Forensic Medical Group or "CFMG"), the Court appointed neutral subject-area monitors for five distinct areas—dental care, medical care, mental health care, Americans with Disabilities Act ("ADA") compliance, and corrections and safety. The Order of Reference requires the monitors to assess Defendants' substantial compliance with the Settlement Agreement and the Implementation Plans. Dkt. 563 at 2-4.
- 3. In 2016, the Court appointed Dr. Bruce Barnett as the neutral monitor for medical care, Dr. Viviane G. Winthrop for dental care, Dr. Kerry Hughes for mental health care, Timothy Gilbert for ADA compliance, and Michael Hackett for corrections and safety. *Id.* In July 2019, Mr. Gilbert and Mr. Hackett were replaced by Michael Brady for ADA compliance, and Richard Bryce for corrections and safety. Dkt. 658 at 2. In April 2022, Dr. Hughes was replaced by Dr. James Vess, who now monitors mental health care. Dkt. 744 at 2. In June 2022, after Mr. Brady tragically passed away, the Court appointed Eric McSwain to monitor ADA architectural compliance and Terri McDonald to monitor ADA programmatic compliance. Dkt. 753 at 2.
- 4. The Order Appointing Neutral Monitors and Order of Reference authorizes each monitor to conduct two site visits each year to assess substantial compliance with the

Citations to filed pleadings are to the ECF-generated page numbers.

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

- 5. At least twice a year, each monitor must prepare a draft report that determines whether Defendants are "substantially complying" with the Settlement Agreement and applicable Implementation Plan. *Id.* at 4. If the draft report contains findings of non-compliance, it must recommend actions Defendants should take to achieve substantial compliance. *Id.* The parties have thirty days to provide written comments, objections, or to cure issues, and seven days to reply. *Id.* The monitor must issue a final report within twenty days after the later of the monitor's receipt of any comments, objections, or replies, or any re-inspection. *Id.*
- 6. Pursuant to the Court's May 29, 2020 Order, each monitor may conduct one additional monitoring tour and issue one additional report per year, for a total of three two-day inspections and three reports per year, per monitor. Dkt. 671 at 6.
- 7. In addition to the above formal monitoring duties, the Court's June 3, 2022 Order authorizes the medical, mental health, and dental monitors to engage in enhanced mentoring, consisting of up to four *additional* visits per year (each up to one week long) to "mentor and shadow staff, review patient files, provide guidance, and train staff in the requirements of the Implementation Plans." Dkt. 751 at 7-8. The mentoring visits do not require written reports. *Id*.
- 8. Since 2017, each of the neutral monitors have issued periodic final reports pursuant to the above processes. As of the date of this filing, Dr. Barnett has issued thirteen final monitoring reports and two reports regarding his enhanced mentoring activities. Dr. Hughes and Dr. Vess have collectively issued nine final reports.
- Dr. Winthrop has issued eight final reports and a draft ninth report. True and correct
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 Case No. CV 13 2354 BLF

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

MEDICAL CARE MONITORING REPORTS

- 9. Attached hereto as **Exhibit 1** is a true and correct copy of Dr. Barnett's finalized 1st Medical Report (toured March 9-10, 2017), dated June 13, 2017 and received by my firm on May 31, 2017 via an email sent by Dr. Barnett.²
- 10. Attached hereto as **Exhibit 2** is a true and correct copy of Dr. Barnett's finalized 2nd Medical Report (toured September 7-8, 2017), dated December 20, 2017 and received by my firm on December 21, 2017 via an email sent by Dr. Barnett.
- 11. Attached hereto as **Exhibit 3** is a true and correct copy of Dr. Barnett's finalized 3rd Medical Report (toured April 9-10, 2018), dated July 2, 2018 and received by my firm on July 2, 2018 via an email sent by Dr. Barnett.
- 12. Attached hereto as **Exhibit 4** is a true and correct copy of Dr. Barnett's finalized 4th Medical Report (toured October 1-2, 2018), undated and received by my firm on April 30, 2019 via an email sent by Dr. Barnett.
- 13. Attached hereto as **Exhibit 5** is a true and correct copy of Dr. Barnett's finalized 5th Medical Report (toured April 15-16, 2019), dated June 10, 2019 and received by my firm on June 10, 2019 via an email sent by Dr. Barnett.

² It is not clear why Dr. Barnett's first report include a date in the heading that post-dates

the day he provided it to the parties. Furthermore, in conjunction with each of his finalized

monitoring reports, it is Dr. Barnett prepared Excel spreadsheet audit tools, as well as an

Excel spreadsheet containing individual patient case reviews. Because these voluminous

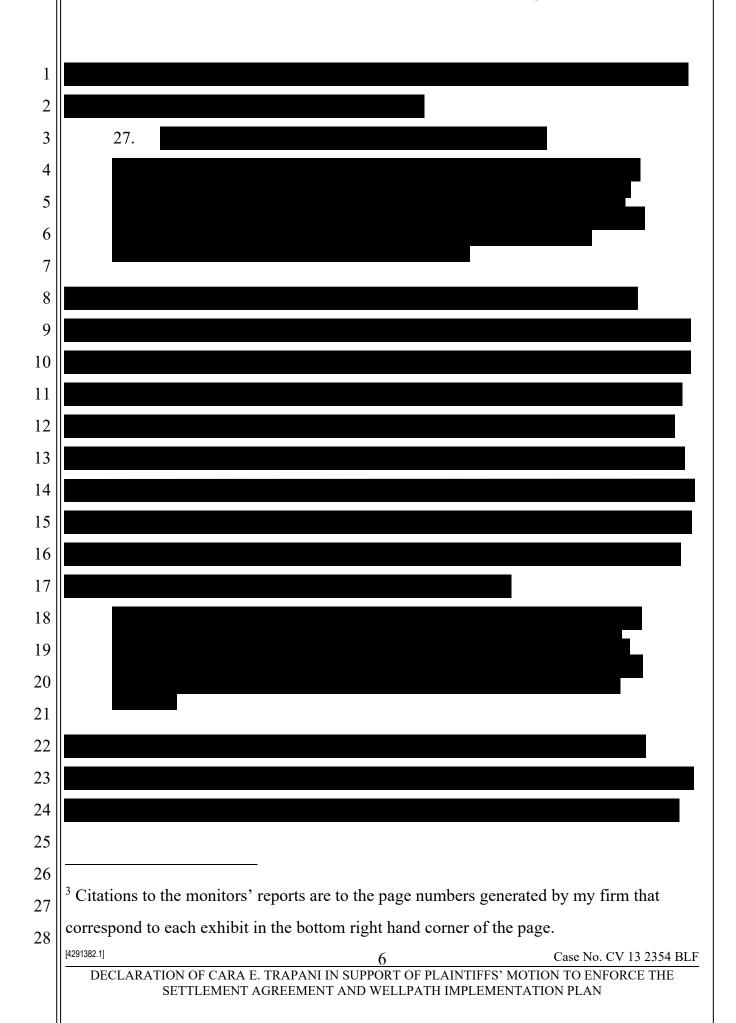
files contain significant patient-level information protected by the Protective Order in this

case (Dkt. 401), I am not attaching those documents to this declaration. All parties have

access to these files, and Plaintiffs can make this data available to the Court upon request. [4291382.1]

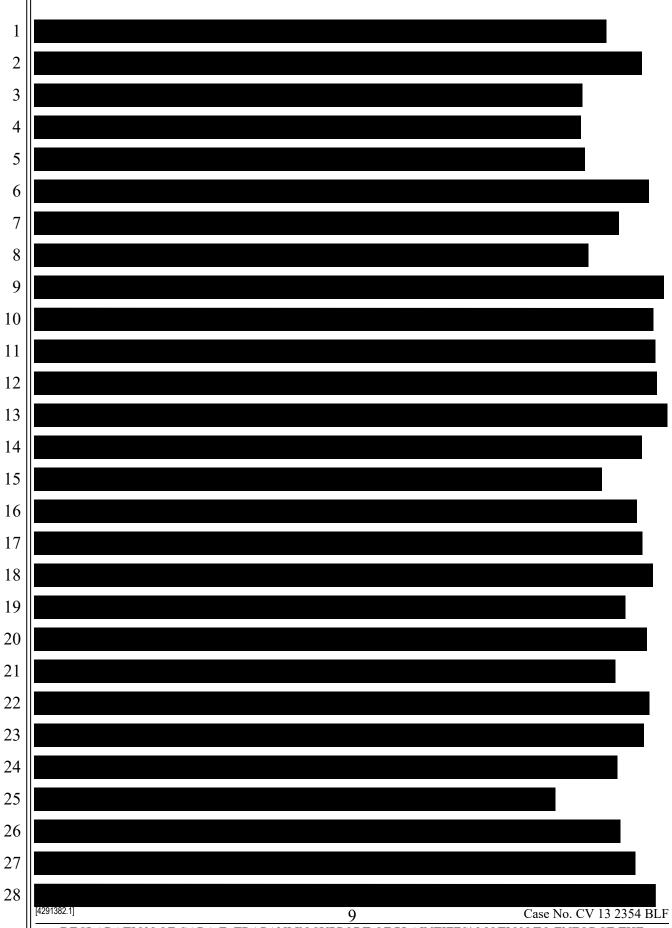
Case No. CV 13 2354 BLF

- 14. Attached hereto as **Exhibit 6** is a true and correct copy of Dr. Barnett's finalized 6th Medical Report (toured October 24-25, 2019), dated December 30, 2019 and received by my firm on December 30, 2019 via an email sent by Dr. Barnett.
- 15. Attached hereto as **Exhibit 7** is a true and correct copy of Dr. Barnett's finalized 7th Medical Report (toured June 18, 2020), dated August 3, 2020 and received by my firm on August 3, 2020 via an email sent by Dr. Barnett.
- 16. Attached hereto as **Exhibit 8** is a true and correct copy of Dr. Barnett's finalized 8th Medical Report (paper audit), dated September 4, 2020 and received by my firm on September 14, 2020 via an email sent by Dr. Barnett.
- 17. Attached hereto as **Exhibit 9** is a true and correct copy of Dr. Barnett's finalized 9th Medical Report (toured December 14-15, 2020), dated February 11, 2021, and received by my firm on February 11, 2021 via an email sent by Dr. Barnett.
- 18. Attached hereto as **Exhibit 10** is a true and correct copy of Dr. Barnett's finalized 10th Medical Report (toured April 29, 2021), dated June 25, 2021, and received by my firm on June 28, 2021 via an email sent by Dr. Barnett.
- 19. Attached hereto as **Exhibit 11** is a true and correct copy of Dr. Barnett's finalized 11th Medical Report (toured September 30-October 1, 2021), dated November 30, 2021, and received by my firm on November 30, 2021 via an email sent by Dr. Barnett.
- 20. Attached hereto as **Exhibit 12** is a true and correct copy of Dr. Barnett's finalized 12th Medical Report (reporting period of November 2021 through May 2022), dated July 20, 2022, and received by my firm on July 20, 2022 via an email sent by Dr. Barnett.
- 21. Attached hereto as **Exhibit 13** is a true and correct copy of Dr. Barnett's finalized 13th Medical Report (toured October 13, 2022), dated December 26, 2022, and received by my firm on December 26, 2022 via an email sent by Dr. Barnett.
- 22. Attached hereto as **Exhibit 14** is a true and correct copy of Dr. Barnett's finalized 1st Enhanced Monitoring and Mentoring Report (paper review) (hereafter "1st 4 Case No. CV 13 2354 BLF



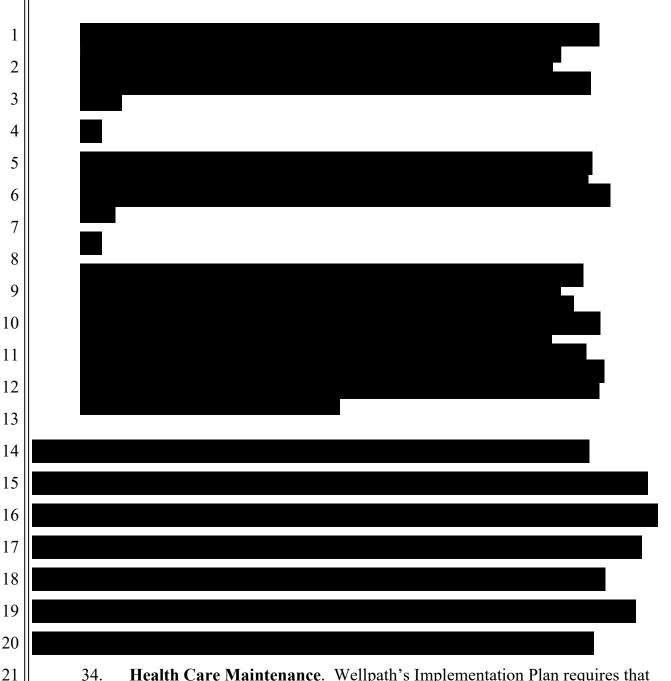
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| 9 | 28. <u>Intake Screening</u> . The Settlement Agreement provides that Defendants will |
| 10 | "ensure that arriving prisoners are promptly screened for urgent medical needs, with |
| 11 | prompt follow-up" Dkt. 494 at 13. Wellpath's Implementation 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. <i>Id.</i> 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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| 12 | 30. Sick Call. The Settlement Agreement provides that "Defendants shall |
| 13 | ensure timely access to necessary treatment by Qualified Medical Professionals for |
| ا4 | prisoners with medical issues." Dkt. 494 at 16; see also Dkt. 532 at 21 (section on Health |
| 15 | Care Philosophy providing same information). Wellpath's Implementation Plan provides |
| 16 | that "[h]ealth complaints of inmates shall be collected, processed and documented on a |
| 17 | daily basis," and patients must be scheduled for the next sick call if the slip was received |
| 18 | prior to 2300 hours. <i>Id.</i> at 25-26. Sick call must be conducted Monday through Friday in |
| 19 | a private clinical environment and sick call slips must be "filed in the inmate's medical |
| 20 | record." Id. at 26. As part of the sick call process, an MD or RN must visit individuals |
| 21 | housed in holding and isolation cells on Monday, Wednesday, and Friday. <i>Id</i> . |
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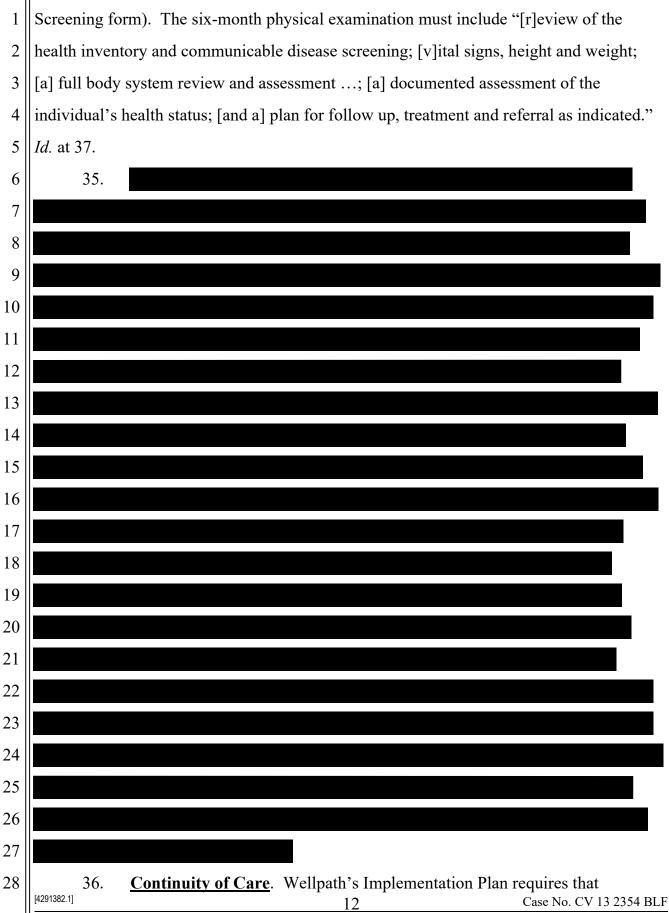


DECLARATION OF CARA E. TRAPANI IN SUPPORT OF PLAINTIFFS' MOTION TO ENFORCE THE SETTLEMENT AGREEMENT AND WELLPATH IMPLEMENTATION PLAN

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| 4 | 32. <u>Chronic Care</u> . 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." <i>Id.</i> at 28. Patients with chronic health |
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| | 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. <i>Id.</i> 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. <i>Id.</i> at 32-33. |
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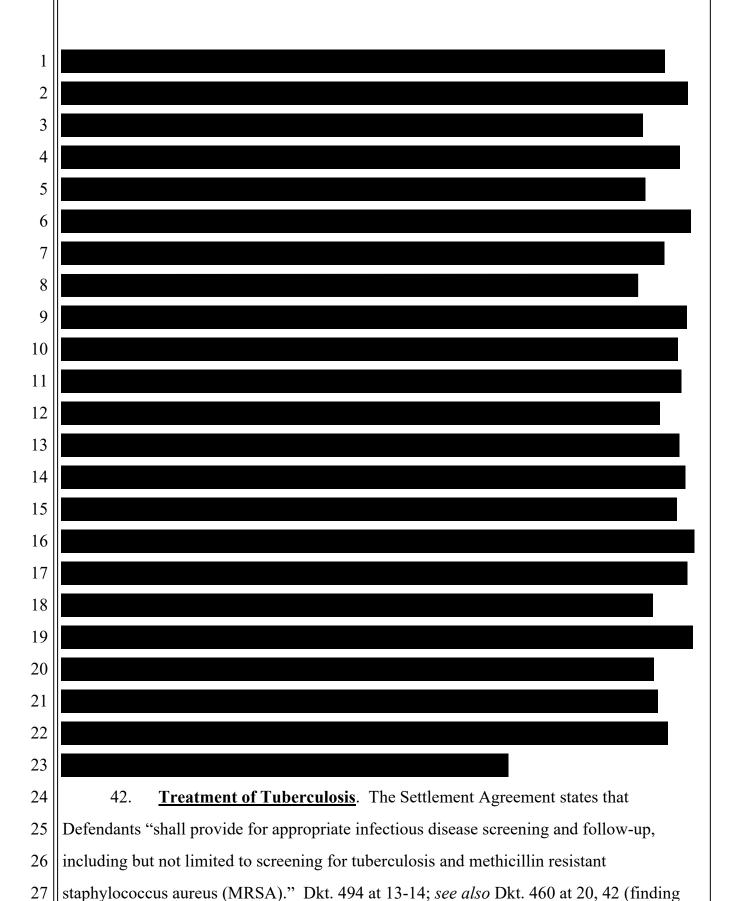


34. Health Care Maintenance. Wellpath's Implementation Plan requires that all patients receive both a 14-day health inventory and communicable disease screening, and a six-month complete physical examination. *See* Dkt. 532 at 30, 37. The 14-day health screening must be completed using the Health Inventory & Communicable Disease Screening Form, attached to the Implementation Plan as Exhibit E, and staff must record the patient's "[t]emperature, pulse, respirations, blood pressure, height and weight," assess for possible sexually transmitted diseases, and note all positive findings on a "problem list" for follow-up. *See id.* at 35, 129-30 (Health Inventory & Communicable Disease [4291382.1] Case No. CV 13 2354 BLF

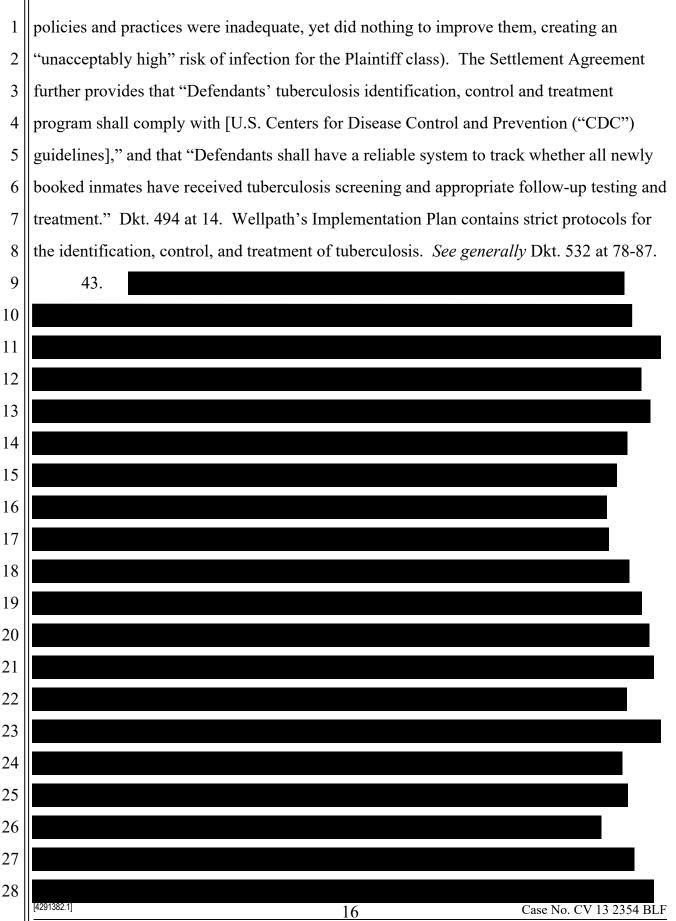


| 1 | "[p]atients will receive continuity of care from admission to discharge while in this |
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| 2 | facility, including referral to community care when indicated." Dkt. 532 at 38. "Inmates |
| 3 | released to the community will be provided with written 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." <i>Id.</i> at 38-39. |
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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. |
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| 40. <u>Treatment of Intoxicated Patients</u> . The Settlement Agreement requires |
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| at "[m]edical providers shall be timely involved in assessing and treating inmates |
| tentially undergoing withdrawal, and non-provider medical staff shall timely refer to |
| oviders those inmate undergoing withdrawals when clinically indicated." Dkt. 494 at |
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| -15. Wellpath's Implementation Plan enumerates numerous specific requirements for |
| e identification and treatment of patients in a state of alcohol or drug intoxication, or |
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| thdrawal. See Dkt. 532 at 18, 48-71. |
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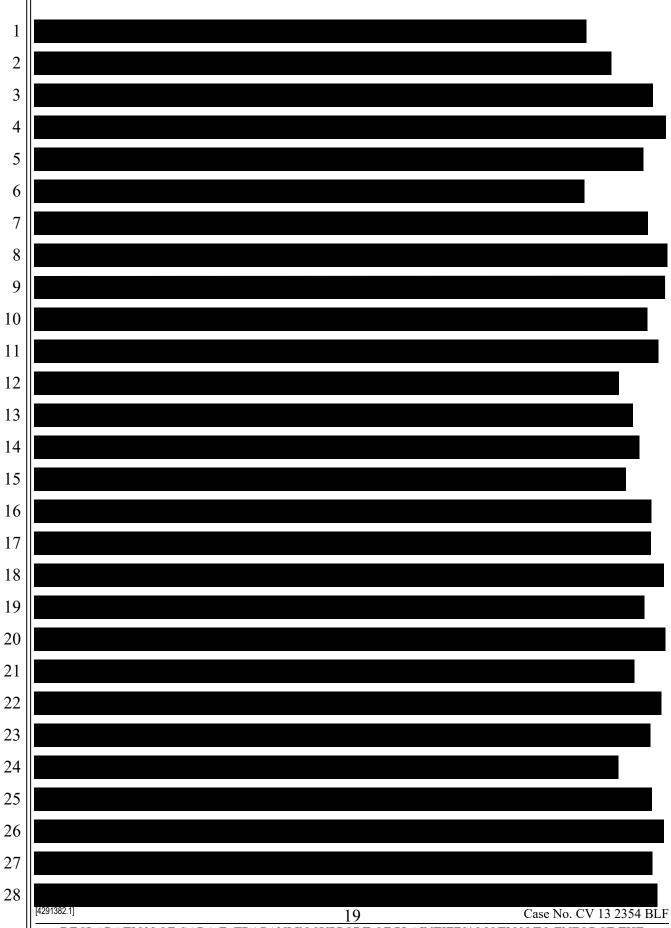
SETTLEMENT AGREEMENT AND WELLPATH IMPLEMENTATION PLAN



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 County Jail." Dkt 532 at 94. "Containers which are cracked, soiled or without secure 6 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 packaging." Id. at 91. "Inmates on essential medications will receive medication while in 9 10 court." Id. at 92. "Controlled substances will be kept under maximum security storage and counted at each shift change" by "the nursing going off duty" together with "the nurse 11 coming on duty." Id. at 93. "The medication nurse is responsible for and will verify" 12 13 whether each patients takes their prescribed medication, including by recording it "on the inmate's medication administration record (MAR)." Id. at 89. "If a prescribed substance 14 15 is refused or withheld, a notation will be made on the [MAR] and the prescribing medical provider shall be notified after three consecutive refusals." *Id.* at 89, 90. 16 17 45. 18 19 20 21 22 23 24 25 26

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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." <i>Id.</i> 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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| 28 | [4291382.1] 18 Case No. CV 13 2354 BLF |



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

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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.

- finalized 2nd Records Review, received by my firm on May 3, 2018 via an email sent by Dr. Hughes. The 2nd Records Review document as originally produced to Plaintiffs' counsel contained numerous pages that appeared to be included in error. This included duplicate pages, blank pages, and pages that appeared to be scrap paper (i.e., an illegibly printed email, a receipt for an amazon purchase, and a blank nomination form for a professional award). Plaintiffs' counsel has removed from the report all blank pages and the pages that appeared to be scrap paper. We have not removed the duplicate pages, due to the risk of removing important substantive components of the report.
- 53. Attached hereto as **Exhibit 22** is a true and correct copy of Dr. Hughes's finalized 3rd Mental Health Report (toured July 10-11, 2018), undated and received by my firm on December 5, 2018 via an email sent by Dr. Hughes.
- 54. Attached hereto as **Exhibit 23** is a true and correct copy of Dr. Hughes's finalized 3rd Records Review, received by my firm on December 5, 2018 via an email sent by Dr. Hughes.
- 55. Attached hereto as **Exhibit 24** is a true and correct copy of Dr. Hughes's finalized 4th Mental Health Report (toured November 28-29, 2018), undated and received by my firm on May 6, 2019 via an email sent by Dr. Hughes.
- 56. Attached hereto as **Exhibit 25** is a true and correct copy of Dr. Hughes's finalized 4th Records Review, received by my firm on May 6, 2019 via an email sent by Dr. Hughes.
- 57. Attached hereto as **Exhibit 26** is a true and correct copy of Dr. Hughes's finalized 5th Mental Health Report (toured June 19-20, 2019), undated and received by my firm on November 5, 2019 via an email sent by Dr. Hughes.
- 58. Attached hereto as **Exhibit 27** is a true and correct copy of Dr. Hughes's finalized 5th Records Review, received by my firm on November 5, 2019 via an email sent by Dr. Hughes.
- 59. Attached hereto as **Exhibit 28** is a true and correct copy of Dr. Hughes's finalized 6th Mental Health Report (toured December 11-12, 2019), undated and received

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

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

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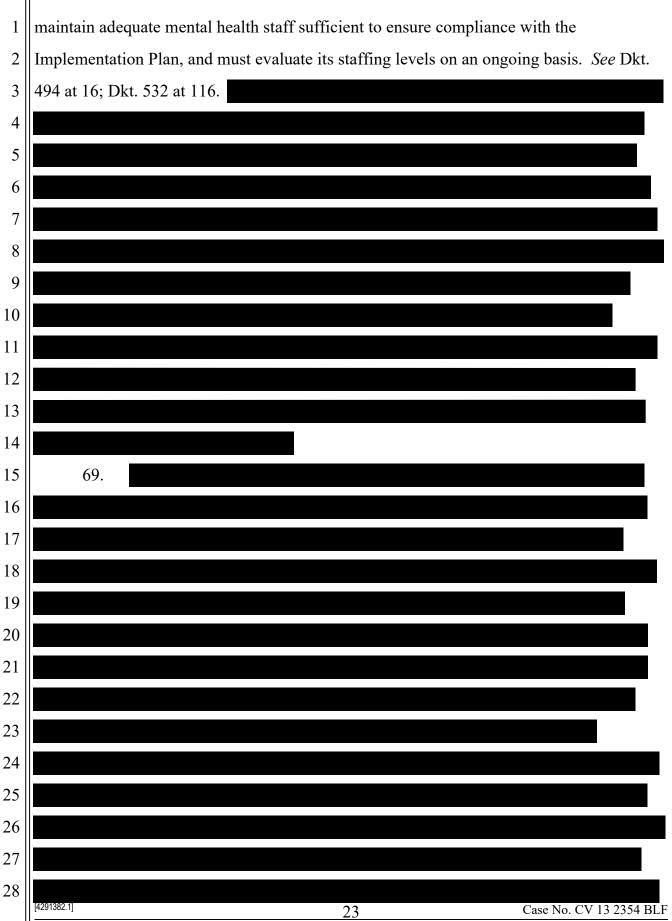
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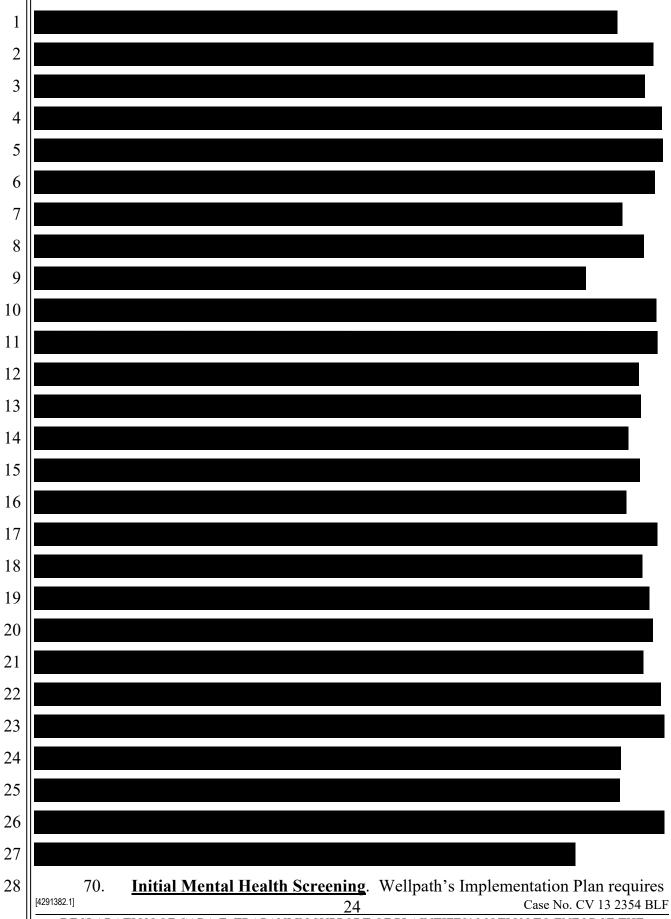
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- Attached hereto as **Exhibit 30** is a true and correct copy of Dr. Hughes's finalized 7th Mental Health Report (toured July 16 and 28-30 2020, and August 7 and 14, 2020), undated and received by my firm on March 9, 2021 via an email sent by Dr. Hughes.
- 62. Attached hereto as **Exhibit 31** is a true and correct copy of Dr. Hughes's finalized 7th Records Review, received by my firm on January 19, 2021 via an email sent by Dr. Hughes.
- 63. Attached hereto as **Exhibit 32** is a true and correct copy of Dr. Hughes's finalized 8th Mental Health Report (toured May 18-19, 2021), undated and received by my firm on January 4, 2022 via an email sent by Dr. Hughes.
- 64. Attached hereto as **Exhibit 33** is a true and correct copy of Dr. Hughes's finalized 8th Records Review, received by my firm on January 4, 2022 via an email sent by Dr. Hughes.
- 65. Attached hereto as **Exhibit 34** is a true and correct copy of Dr. Vess's finalized 9th Mental Health Report (toured July 21-22, 2022), undated and received by my firm on November 4, 2022 via an email sent by Dr. Hughes.
- 66. Attached hereto as **Exhibit 35** is a true and correct copy of Dr. Vess's finalized 9th Records Review, received by my firm on September 16, 2022 via an email sent by Dr. Vess.
- 67. Attached hereto as **Exhibit 36** is a true and correct copy of the finalized Mental Health CAP that was created by Wellpath and approved by Dr. Hughes as a result of the Court's May 29, 2020 Order. See Dkt. 671 at 5-6.

SUSTAINED NONCOMPLIANCE WITH MENTAL HEALTH REQUIREMENTS

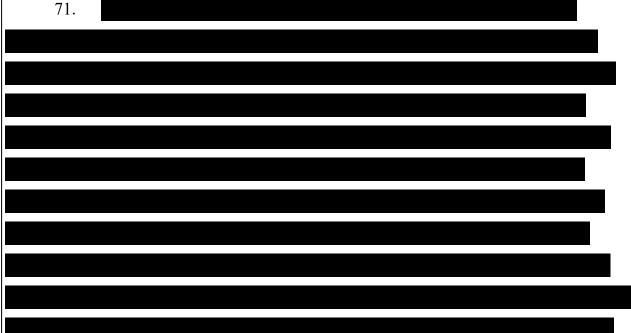
Mental Health Staffing. The Settlement Agreement requires Wellpath to 68. [4291382.1] Case No. CV 13 2354 BLF





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

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

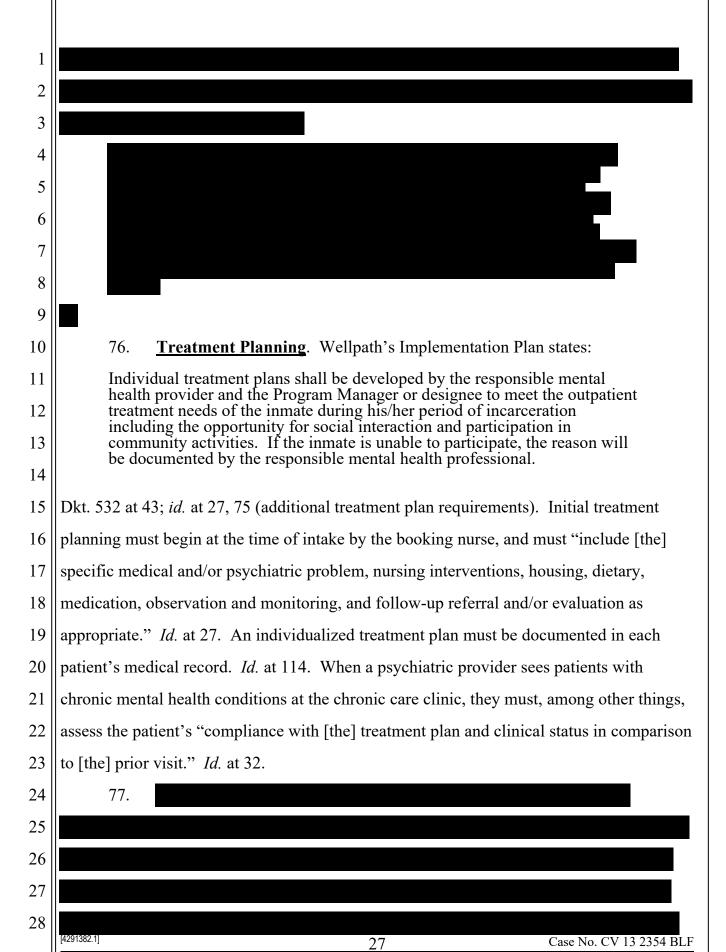


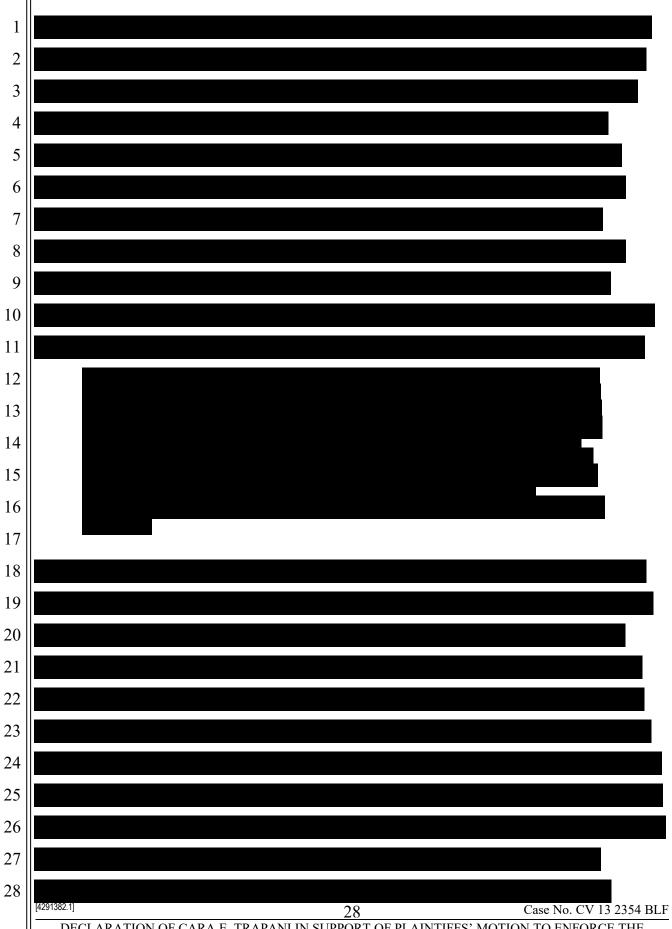
72. Nursing Rounds in Administrative Segregation. Wellpath's Implementation Plan provides that "[n]ursing staff shall conduct mental health rounds in Administrative Segregation daily, separate and apart from medication distribution." Dkt. 532 at 43.

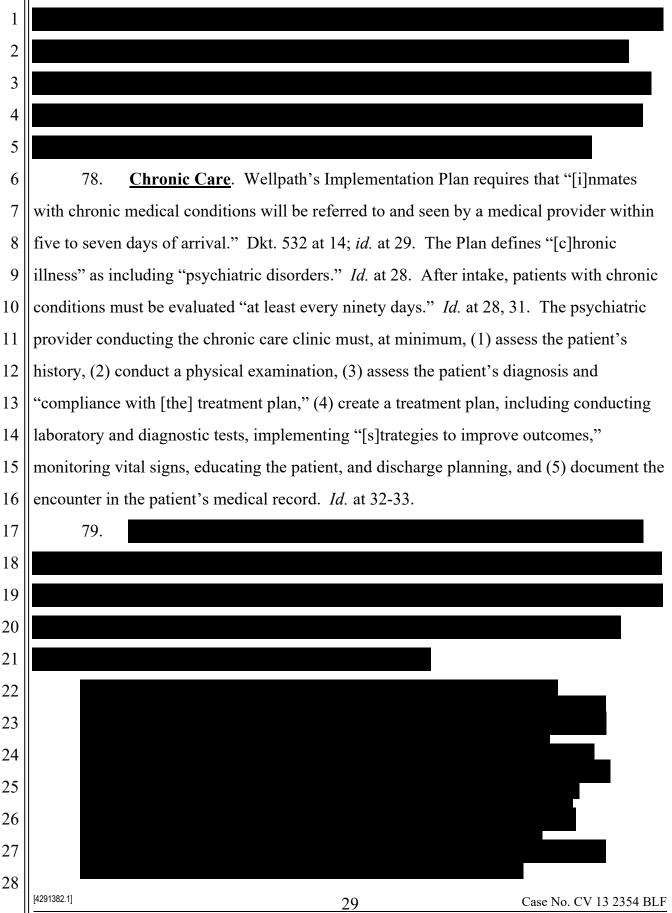
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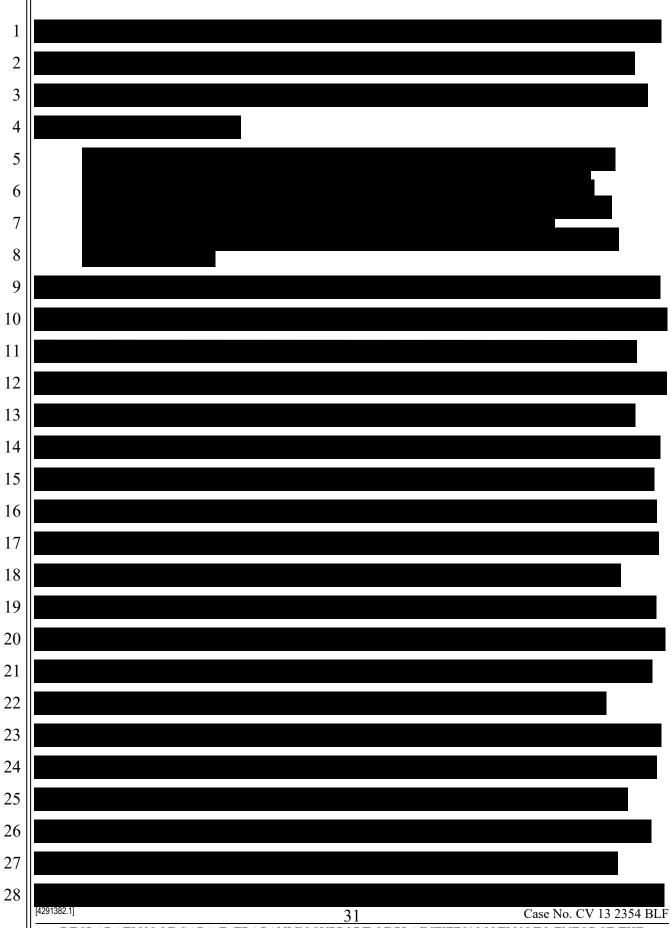
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| 10 | 74. <u>Hospital Transfers</u> . Wellpath's Implementation Plan provides that "[a]ny |
| 11 | inmate who has been placed in a safety cell for Suicide Precautions for 24 consecutive |
| 12 | hours shall be transferred to either an appropriate 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." <i>Id.</i> 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. |
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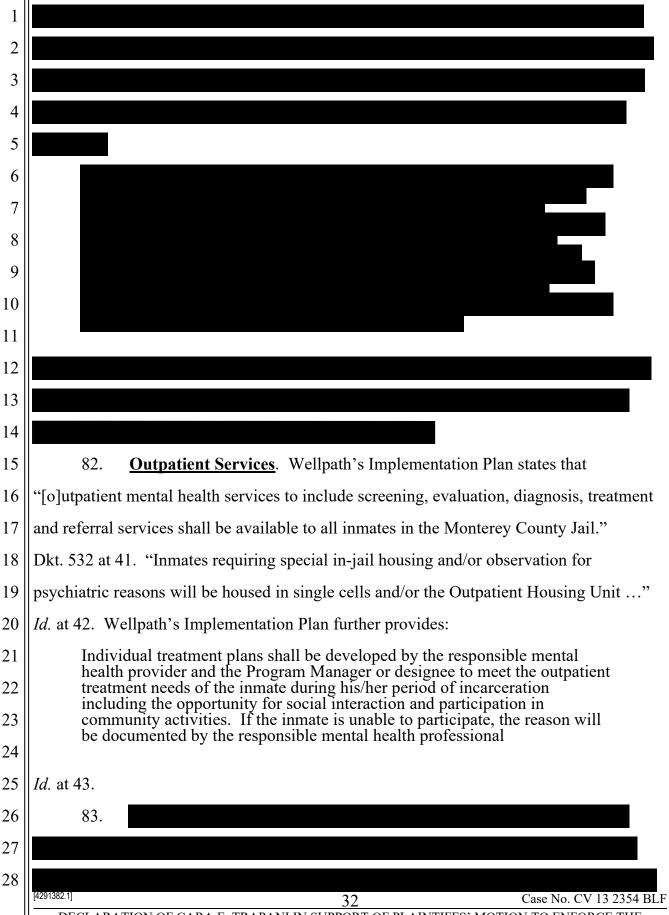




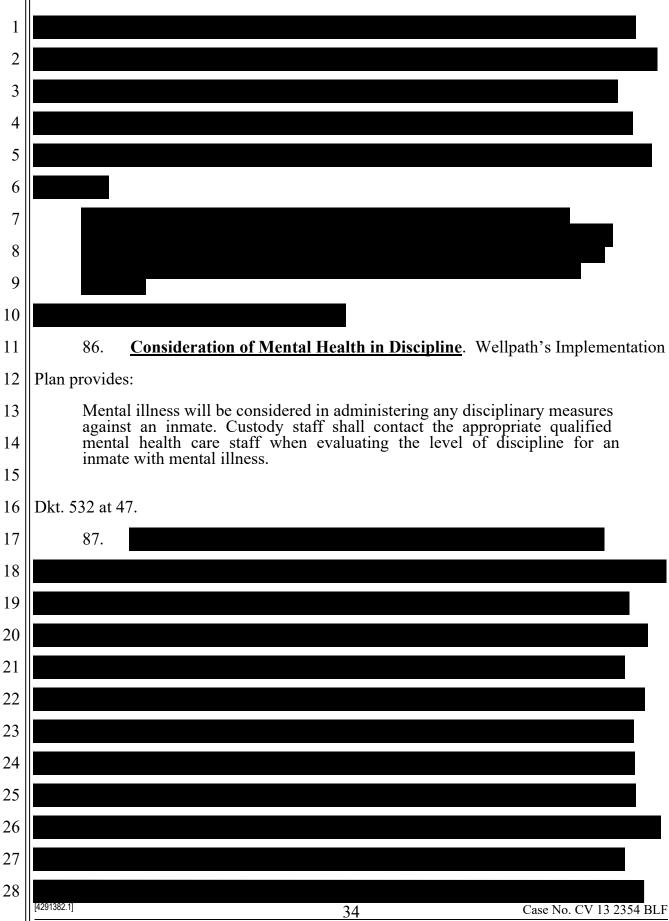


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| 2 | 80. <u>Acute Care</u> . The Settlement Agreement provides that Defendants shall |
| 3 | "ensure timely access to hospitalization and inpatient care." Dkt. 494 at 17. Wellpath's |
| 4 | Implementation Plan requires that "[i]nmates who require 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. |
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| l6 l7 | 84. Psychiatric Follow-Up Visit Intervals . Wellpath's Implementation Plan |
| 18 | 84. <u>Psychiatric Follow-Up Visit Intervals</u> . Wellpath's Implementation Plan requires that "patient[s] on psychiatric medications will be seen by the psychiatrist every |
| | 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. |
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88. <u>Segregation Placement Screenings</u>. The Settlement Agreement provides:

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

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

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

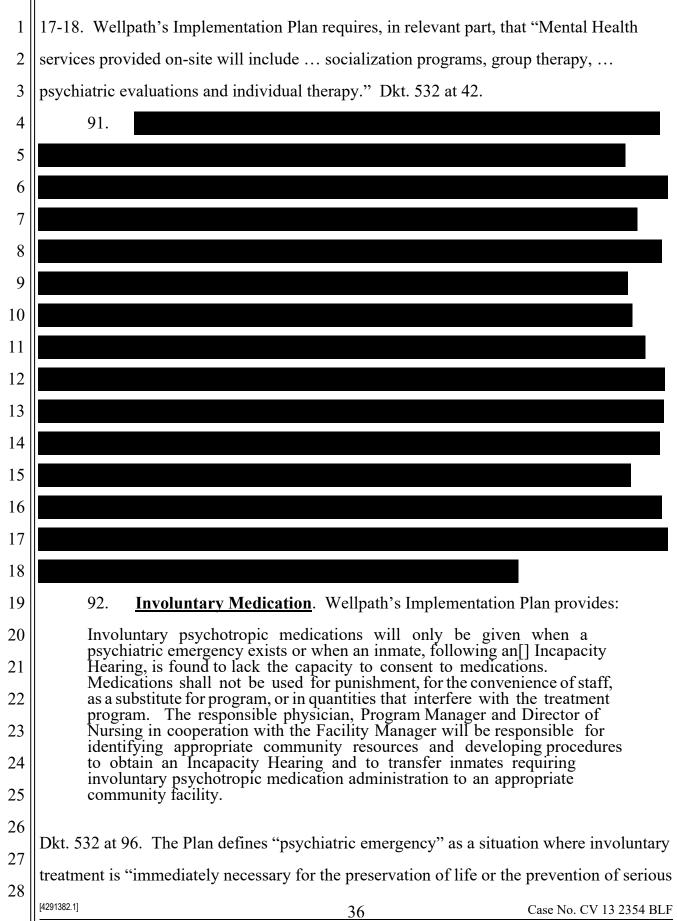
Dkt. 532 at 43.



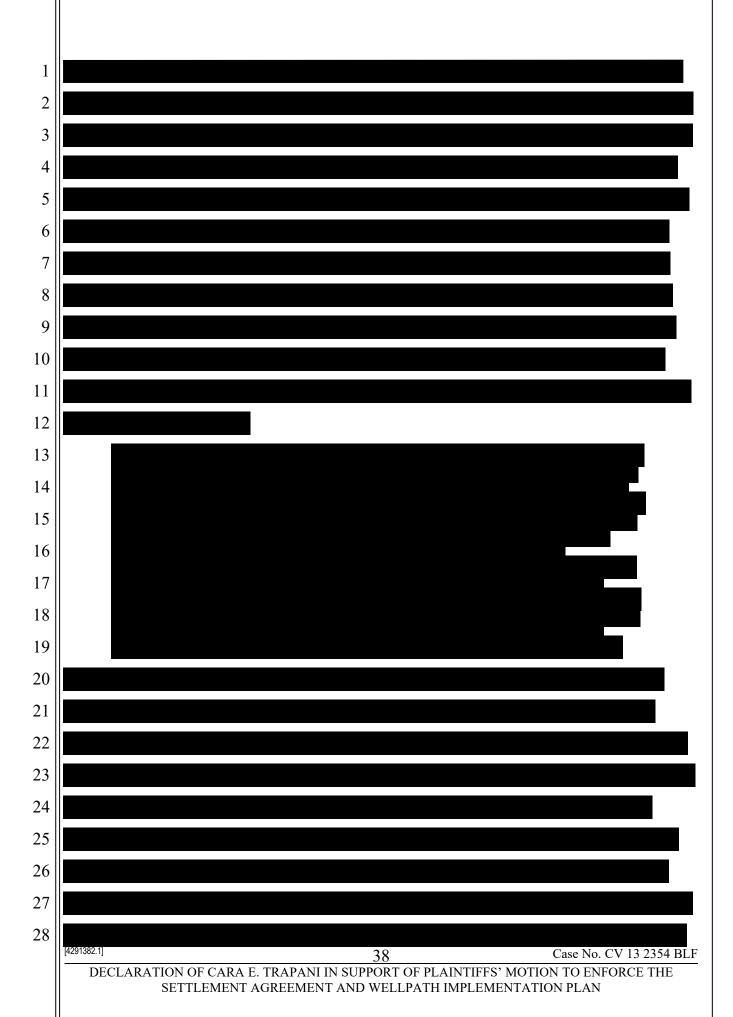
90. Mental Health Programming in Segregation. The Settlement Agreement mandates that "[t]he Mental Health Implementation Plan shall require ... procedures to mitigate the impact of administrative segregation on persons with mental illness, including but not limited to structured therapeutic activity outside the segregation cell." Dkt. 494, at [4291382.1]

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| 1 | bodily harm to the inmate or others." <i>Id.</i> Involuntary psychotropic medications may only |
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| 2 | be given pursuant to a "one-time order from the responsible facility psychiatrist or |
| 3 | physician following an on-site evaluation." <i>Id.</i> 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. <i>Id.</i> 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." <i>Id.</i> |
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| 21 | 94. <u>Suicide Risk Assessments</u> . 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. |
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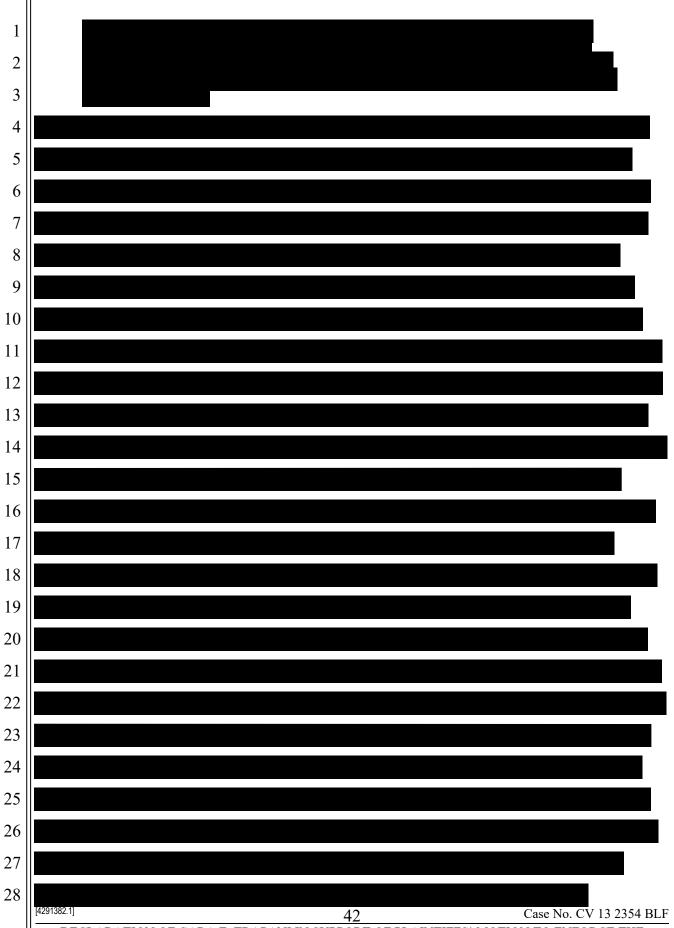
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| 5 | 96. Medical Records. Wellpath's Implementation Plan requires that each |
| 6 | patient's medical record contain the following items, as applicable: |
| 7 | 1. The completed Receiving Screening form. |
| 8 | 2. Health Inventory/Communicable Disease Screening forms.3. Problem list. |
| 9 | 4. All findings, diagnosis, treatments, dispositions.5. Prescribed medications and their administration. |
| 10 | 6. Laboratory, x-ray and diagnostic studies. |
| 11 | 7. Consent and Refusal forms.8. Release of Information forms. |
| 12 | 9. Place and date of health encounters (time, when pertinent). 10. Health service reports (i.e., dental, psychiatric, and other consultations). |
| 13 | 11. Hospital Discharge Summaries. |
| 14 | 12. Jail Medical Record Summaries (transfer forms).13. Individual treatment plan |
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| 16 | Dkt. 532 at 114. |
| 17 | 97. |
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| 23 | 98. <u>Corrective Action Plans</u> . The Settlement Agreement states that "[t]o |
| 24 | 'implement' a policy means that compliance with the policy is monitored and tracked, |
| 25 | the policy is consistently applied; and there are corrective action measures to address |
| 26 | lapses in application of the policy." Dkt. 494 at 11-12. Wellpath's Implementation Plan |
| 27 | provides that Wellpath will engage in post-implementation monitoring, including "focused |
| 28 | process[es] and outcome audits to measure compliance with the elements of the [Wellpath] |

| 1 | Implementation Plan. Corrective action plans will be developed and instituted for |
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| 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. |
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| 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. |
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| 28 | [4291382.1] 40 Case No. CV 13 2354 BLF |
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1 2 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 cases involving the need for involuntary psychiatric medication administration will be 6 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 in accordance with [Wellpath's] Inmate Deaths Policy and Procedure." Id. at 77. Under 11 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 review is completed. Dkt. 671 at 6. 14 15 103. 16 17 18 19 20 21 22 23 24 25 26 27 28

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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 |

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

- 110. Attached hereto as **Exhibit 44** is a true and correct copy of Dr. Winthrop's finalized 7th Dental Report (toured January 11-12, 2022), dated June 17, 2022 and received by my firm on June 17, 2022 via an email sent by Dr. Winthrop.
- 111. Attached hereto as **Exhibit 45** is a true and correct copy of Dr. Winthrop's finalized 8th Dental Report (toured May 24-25, 2022), dated November 21, 2022 and received by my firm on that date via an email sent by Dr. Winthrop. Dr. Winthrop separately recorded her findings in specific areas of dental care in her 8th Dental Audit Tool, attached hereto as **Exhibit 46** are true and correct copies of relevant excerpts of this document.⁵
- 112. Attached hereto as **Exhibit 47** is a true and correct copy of Dr. Winthrop's draft 9th Dental Report (toured December 5-6, 2022), dated March 21, 2023 and received by my firm on that date via an email sent by Dr. Winthrop. Dr. Winthrop separately recorded her findings in specific areas of dental care in her 9th Dental Audit Tool; attached hereto as **Exhibit 48** are true and correct copies of relevant excerpts of this document. Plaintiffs plan to update their Enforcement Motion and this declaration once Dr. Winthrop finalizes her 9th Dental Report.
- 113. Attached hereto as **Exhibit 49** is a true and correct copy of the finalized Dental CAP that was created by Wellpath and approved by Dr. Winthrop as a result of the Court's May 29, 2020 Order. *See* Dkt. 671.

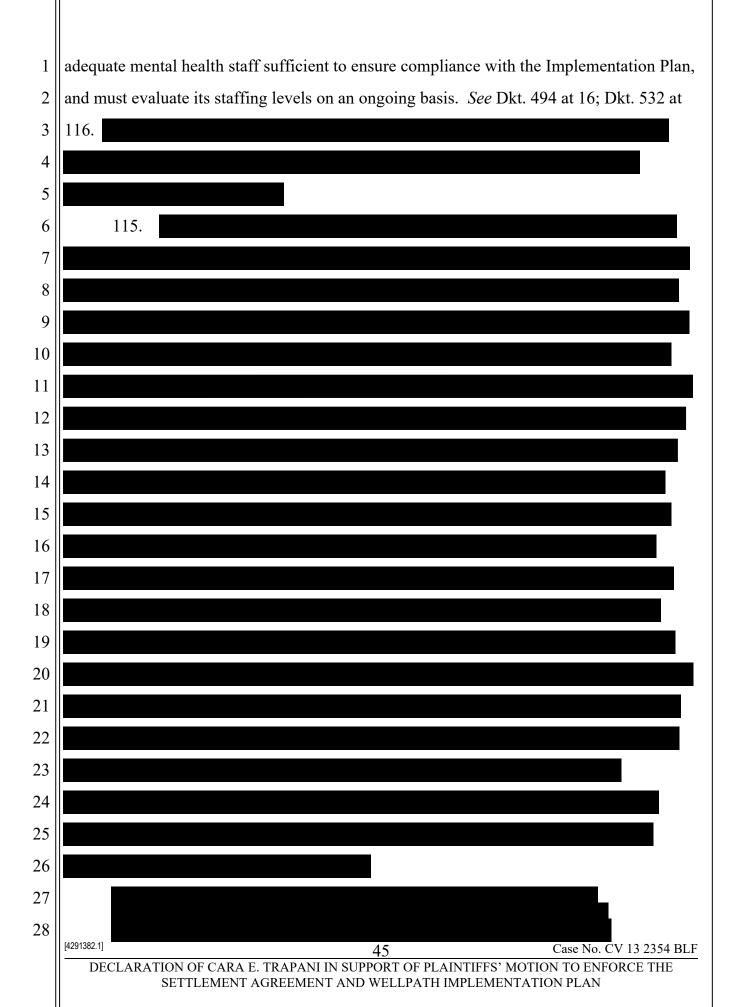
SUSTAINED NONCOMPLIANCE WITH DENTAL REQUIREMENTS

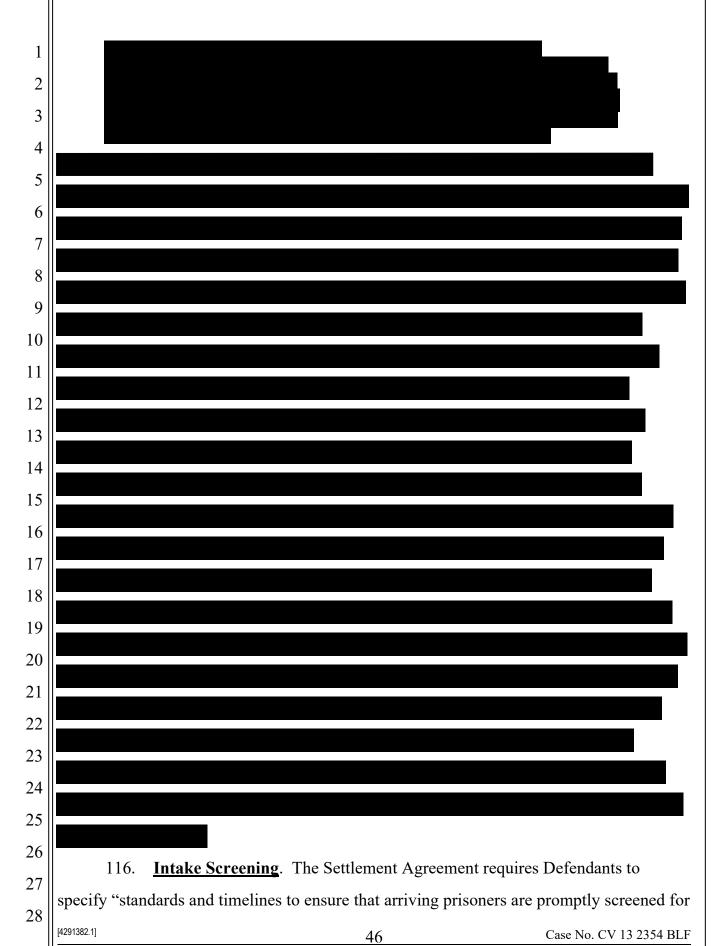
114. **Dental Staffing**. The Settlement Agreement requires Wellpath to maintain

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

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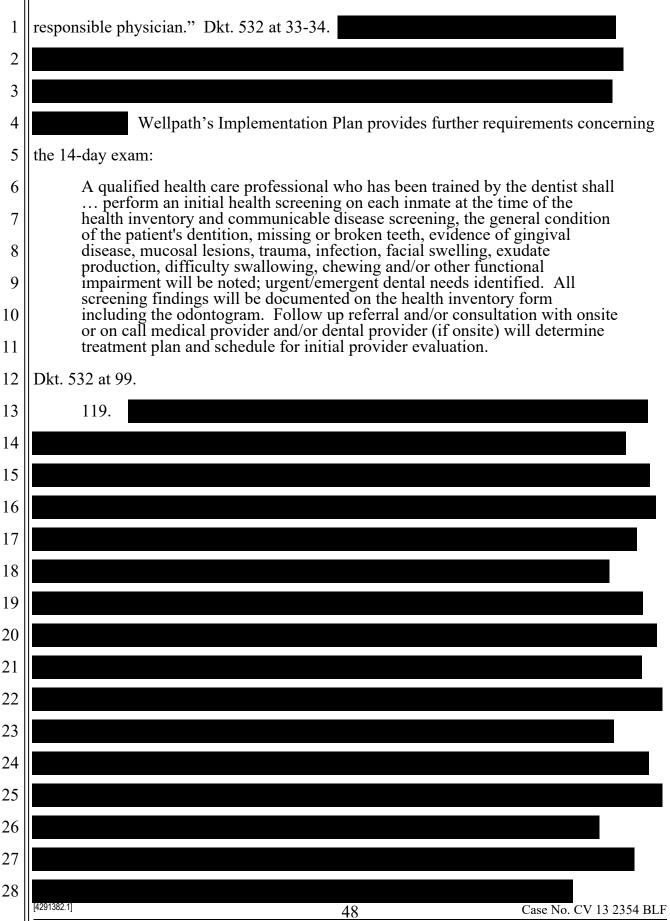


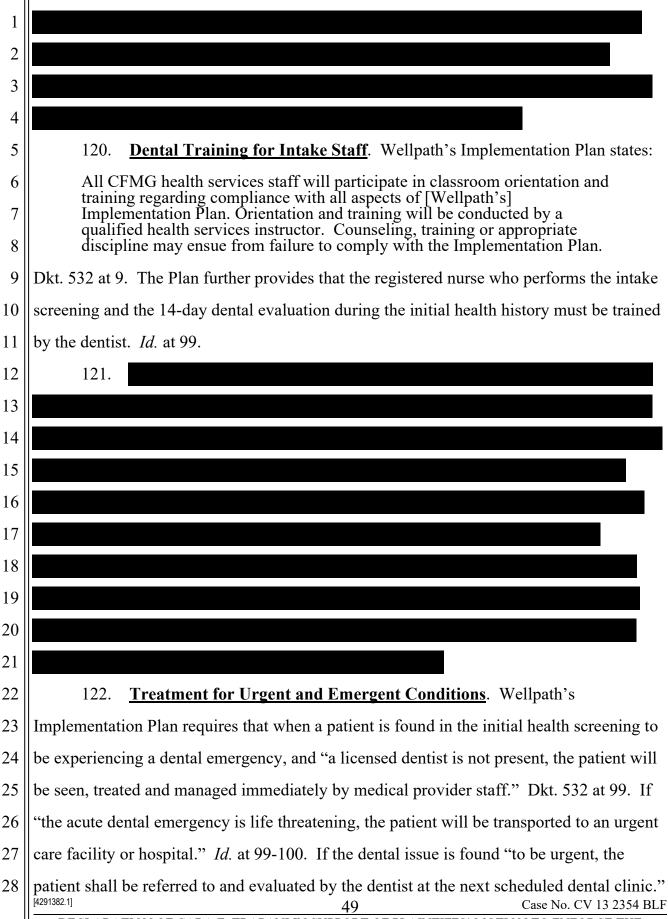


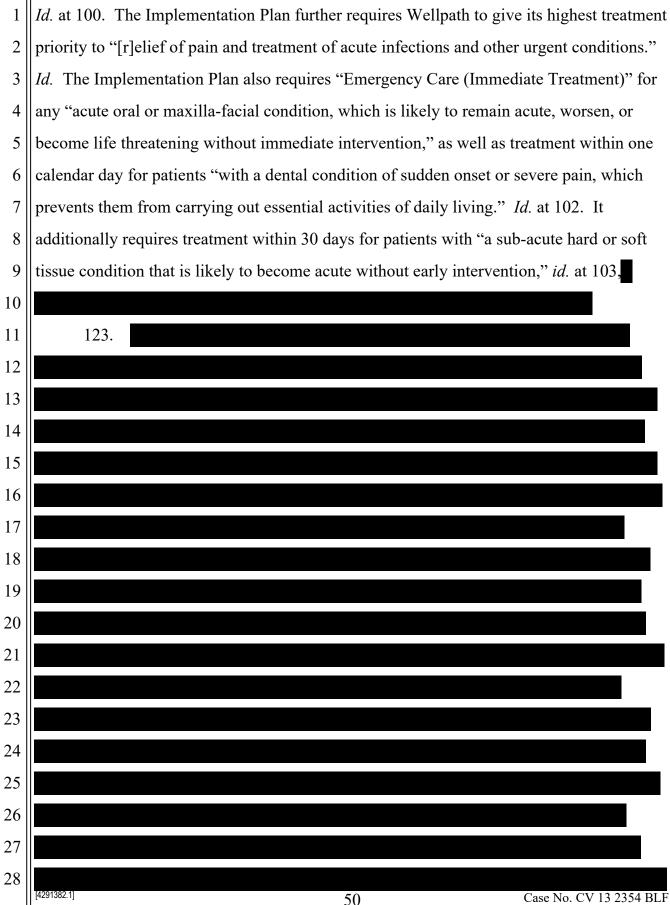
| 1 | urgent dental needs, with prompt follow-up." Dkt. 494 at 13. The Settlement |
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| 2 | Agreement further provides that "Defendants shall develop and implement a Dental Care |
| 3 | Implementation Plan to ensure timely access to necessary treatment for dental and oral |
| 4 | health conditions, including but not limited to Intake Screening." <i>Id.</i> 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 |
| 0 | the dental issue to be urgent, the patient shall be referred to and evaluated by the dentist at |
| 11 | the next scheduled dental clinic." <i>Id.</i> at 100. |
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| 25 | 118. <u>Initial Health Inventory</u> . 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 |

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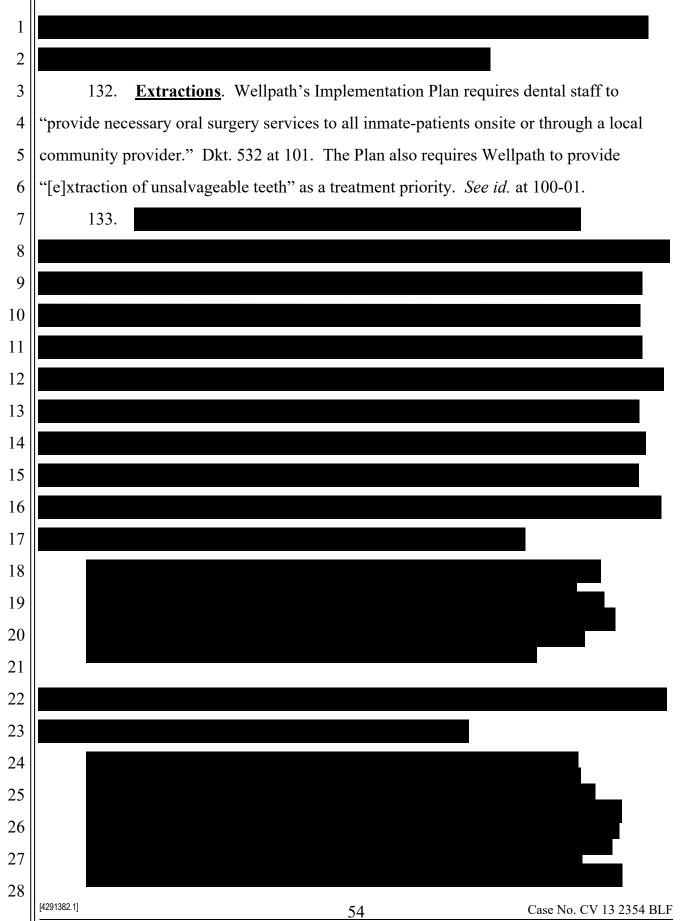




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| 10 | 124. <u>Dental Sick Call</u> . Wellpath's Implementation Plan requires that: |
| 11 | All dental complaints are assessed, provided treatment for obvious infection and pain relief at regularly scheduled medical sick call by the MD, PA or RN |
| 12 | All dental complaints are assessed, provided treatment for obvious infection and pain relief at regularly scheduled medical sick call by the MD, PA or RN 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. |
| 13 | and infection is provided until the patient is seen by the dentist. |
| 14 | Dkt. 532 at 102. |
| 15 | 125. |
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| 7 | 126. <u>Chronic Care</u> . 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 |
| 0 | at 28. Pursuant to the Court's May 2020 Order (Dkt. 671), Wellpath created a dental care |
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| 1 | CAP, which was approved by Dr. Winthrop, that required Wellpath |
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| 7 | 128. <u>Comprehensive Care</u> . The Settlement Agreement requires Wellpath "to |
| 8 | ensure timely access to necessary treatment for dental and oral health conditions, including [4291382.1] Case No. CV 13 2354 BLI |

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| 9 | planning forms which will be filed in the patient medical record." <i>Id</i> . 129. |
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| 7 | Plan further requires that "[e]xamination findings and proposed treatment plan will be documented on standardized comprehensive dental exam, periodontal exam and treatment |
| 5 | the health and welfare of inmate patients." Dkt. 532 at 104. Wellpath's Implementation |
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| 4 | shall be for the identification, diagnosis, and treatment of dental pathology which impacts |
| 3 | eligible to receive a comprehensive dental exam. The purpose of the dental examinations |
| 2 | periodic dental care for long-term prisoners." Dkt. 494 at 18. Wellpath's Implementation Plan requires that: "Inmates incarcerated for 12 months or greater are |
| 1 | poriodio dental care for long term prigoners " Dist 404 et 19 Wellneth's |



Specialty Care Referrals. Wellpath's Implementation Plan requires Wellpath to "provide necessary oral surgery services to all inmate-patients onsite or through a local community provider." Dkt. 532 at 101. "Complicated dental problems" must be "referred to an oral surgeon as deemed necessary." Id. at 103. The Plan also requires that "[r]eferral to and priority of offsite oral surgeon" must be conducted in accordance with the timelines and treatment priorities required by the Implementation Plan. *Id.* at 102. For root canal services, procedures that "cannot be accomplished by [Wellpath's] dentist at MCJ will be referred to a contracted dentist in the outside facility" and that "[a] local contract dentist will be available for referral when in the opinion of the treating dentist the procedure could be handled more predictably by an endodontic specialist." Id. at 109-10. Patients with failing dental implants "shall be referred to a dental specialist experienced in the management and placement of dental implants" for evaluation. Id. at 112. 135.

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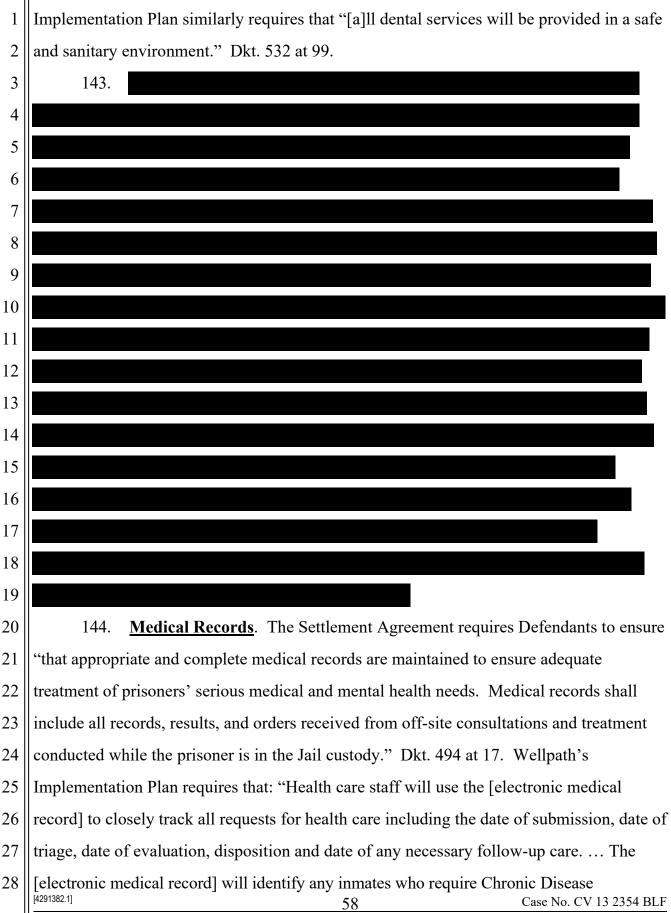
2 136. **Endodontics**. Wellpath's Implementation Plan requires that all patients at 3 the Jail must be "eligible to receive palliative endodontic therapy limited to upper and 4 lower anterior teeth." Dkt. 532 at 109. Individuals incarcerated for 12 months or longer 5 must also be "eligible to receive root canal therapy limited to upper and lower anterior teeth." Id. Both palliative endodontic therapy and root canal treatments must be 6 7 "performed in accordance with established criteria and within the specific guidelines" of 8 the Implementation Plan. Id. The Implementation Plan imposes a series of requirements 9 for when and how these procedures must be performed. *Id.* at 109-10. 10 137. 11 12 13 14 138. **Periodontics**. Wellpath's Implementation Plan requires that: "MCJ will 15 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 16 17 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. 18 19 139. 20 21 22 23 24 25 26 27 28 Case No. CV 13 2354 BLF 56

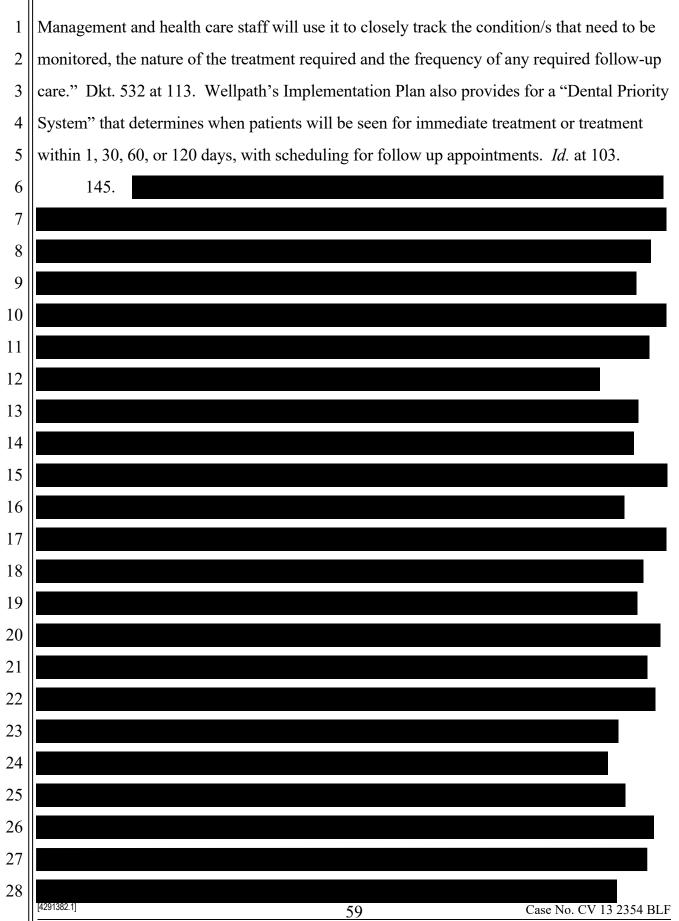
| 1 | 140. <u>Informed Consent</u> . Wellpath's Implementation Plan contains numerous |
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| 2 | provisions concerning informed consent related to dental procedures. See Dkt. 532 at 21 |
| 3 | ("Written informed consent shall be obtained for all invasive 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"). |
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| 27 | 142. Sanitary Treatment Space. The Settlement Agreement requires "a safe and |

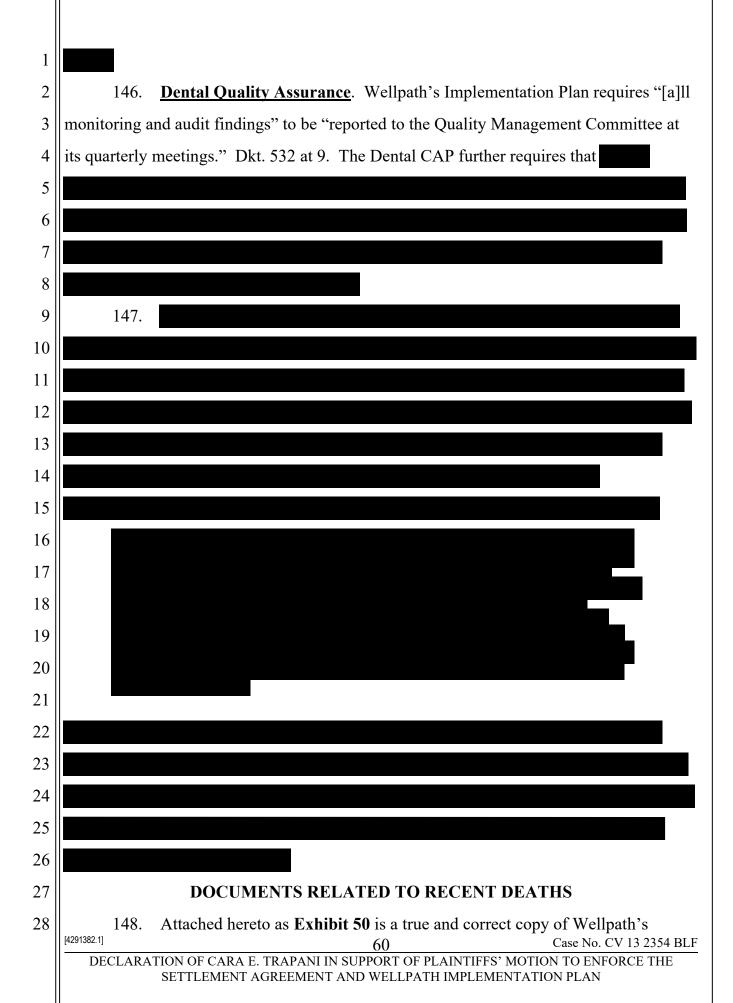
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sanitary on or off-site facility for necessary dental care." Dkt. 494 at 18. Wellpath's

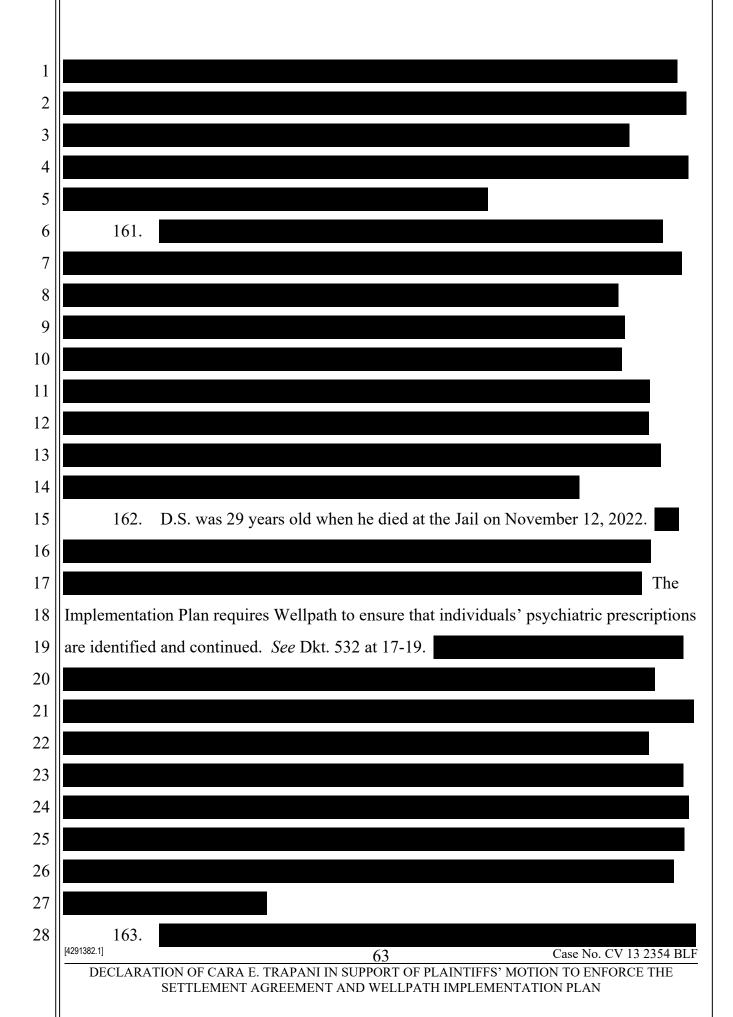
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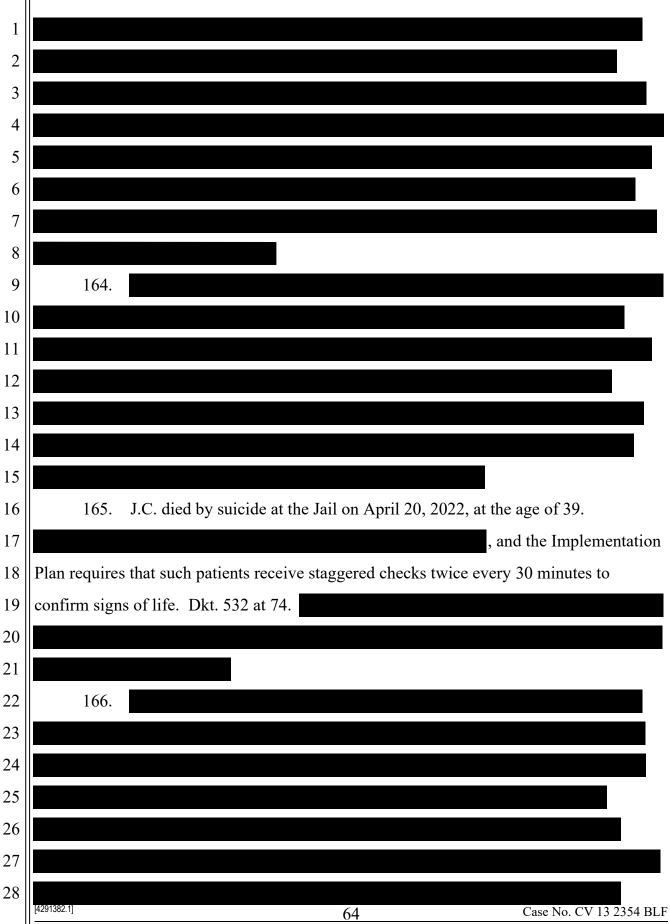




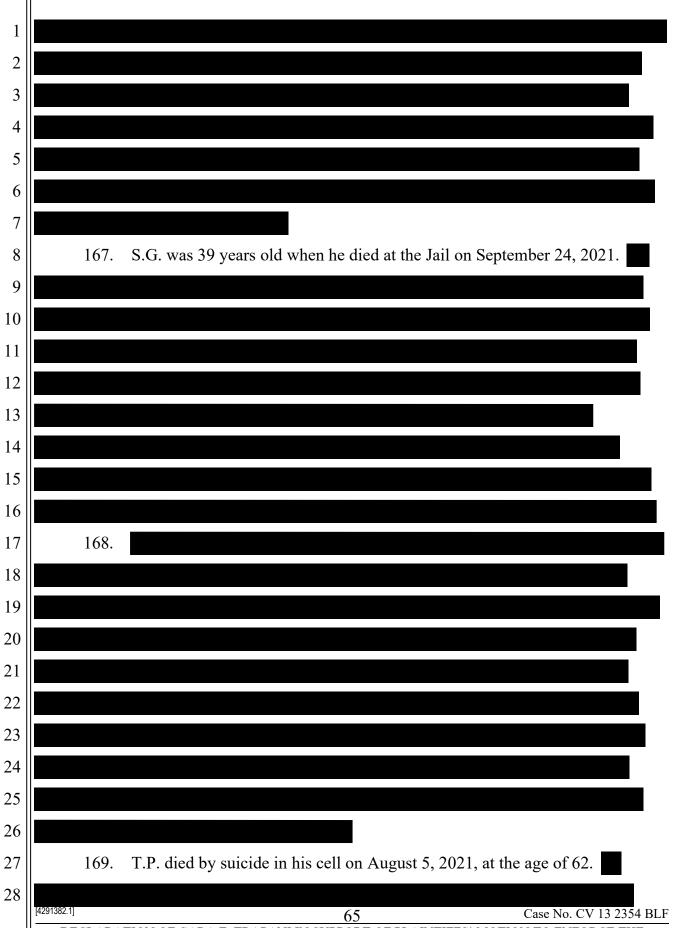


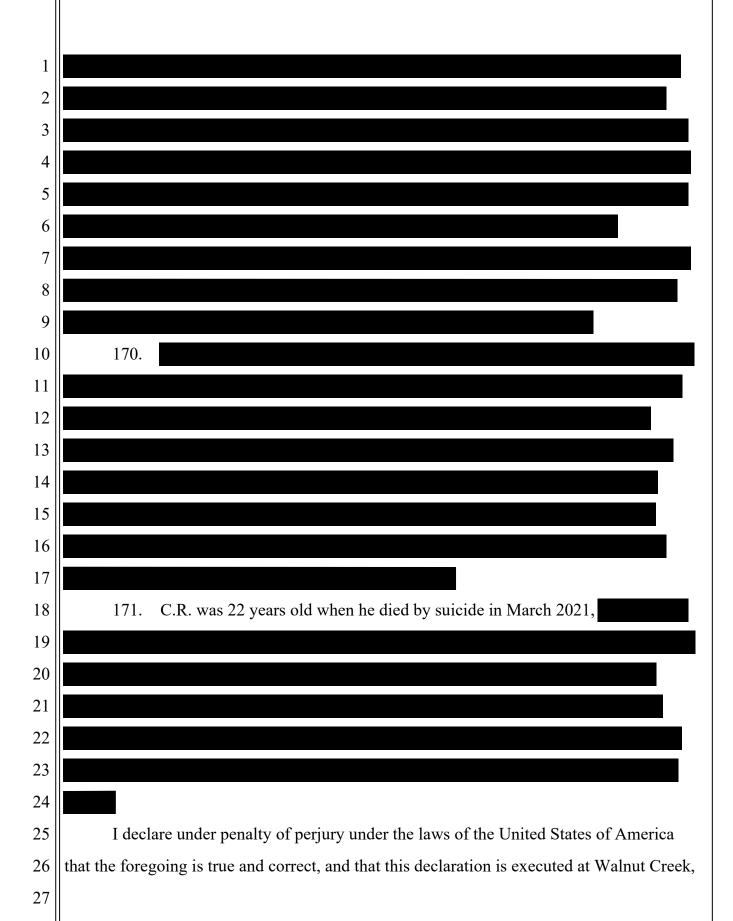
| 1 | electronic medical records file for M.M., who died by suicide on January 4, 2023 ("M.M. |
|----|---|
| 2 | CorEMR File"), that I received via email from Peter Bertling, counsel for Wellpath, on |
| 3 | January 23, 2023. |
| 4 | 149. Attached hereto as Exhibit 51 is a true and correct copy of the County's |
| 5 | custodial records for M.M. ("M.M. Custody Records"), which I received via email from |
| 6 | Susan K. Blitch, 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. Blitch 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. Blitch, 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. |
| | DECLARATION OF CARA E. TRAPANI IN SUPPORT OF PLAINTIFFS' MOTION TO ENFORCE THE |





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





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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)