

1 MICHAEL W. BIEN – 096891
 ERNEST GALVAN – 196065
 2 VAN SWEARINGEN – 259809
 CARA E. TRAPANI – 313411
 3 CAROLINE E. JACKSON – 329980
 BEN HATTEM – 335232
 4 ROSEN BIEN
 GALVAN & GRUNFELD LLP
 5 101 Mission Street, Sixth Floor
 San Francisco, California 94105-1738
 6 Telephone: (415) 433-6830
 Facsimile: (415) 433-7104
 7 Email: mbien@rbgg.com
 egalvan@rbgg.com
 8 vswearingen@rbgg.com
 ctrapani@rbgg.com
 9 cjackson@rbgg.com
 bhattem@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

10 CORENE KENDRICK – 226642
 11 KYLE VIRGIEN – 278747
 NATIONAL PRISON PROJECT of the
 12 AMERICAN CIVIL LIBERTIES UNION
 39 Drumm Street
 13 San Francisco, California 94111-4805
 Telephone: (202) 393-4930
 14 Facsimile: (202) 393-4931
 Email: ckendrick@aclu.org
 15 kvirgien@aclu.org

16 Attorneys for Plaintiffs

17
 18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA

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

21 Plaintiffs,

22 v.

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

26 Defendants.

Case No. CV 13 2354 BLF

**[PROPOSED] ORDER GRANTING
 PLAINTIFFS’ MOTION TO
 ENFORCE THE SETTLEMENT
 AGREEMENT AND WELLPATH
 IMPLEMENTATION PLAN**

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

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 28 [4252386.1]

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[PROPOSED] ORDER

In April 2015, the Court entered a preliminary injunction in favor of Plaintiffs, finding “significant evidence that Defendants’ policies and practices constitute deliberate indifference to Plaintiffs’ serious medical needs.” Dkt. 406 at 21. Four months later, the Court approved the parties’ Settlement Agreement and ordered Defendants to comply with its terms. Dkt. 494 at 4. The Court retained jurisdiction and power to enforce the agreement and found that it satisfied the Prison Litigation Reform Act (“PLRA”), 18 U.S.C. § 3626(a)(1)(A). The Court also ordered the parties to develop Implementation Plans that would be “enforceable by the Court as part of the Settlement Agreement,” Dkt. 494 at 4, and it approved and adopted these Implementation Plans with some modifications in May 2016. *See* Dkt. 549; *see also* Dkt. 528-1 (County Implementation Plan); Dkt. 532 (CFMG Implementation Plan).

Following settlement, the Court empowered neutral monitors to determine whether Defendants are in substantial compliance with the Settlement Agreement and the Implementation Plans. *See* Orders Appointing Neutral Monitors and Orders of Reference, Dkts. 563, 658, 744, and 753.

[REDACTED]

To address Wellpath’s persistent noncompliance, the Court ordered Wellpath in

[4252386.1]

1 May 2020 to create and implement “corrective action plans to remedy all the areas for
2 which the neutral monitors have found [Wellpath] to be not in substantial compliance.”
3 Dkt. 671 at 3. Although the Court ordered Wellpath to create these corrective action plans
4 within 30 days and implement them within 90, Wellpath failed to finalize the corrective
5 action plans for more than a year and still has not complied with them. *See* Dkt. 751 at 3.
6 The Court therefore issued a further order in June 2022, granting the neutral monitors
7 authority to conduct additional visits to the Jail “to mentor and shadow staff, review
8 patient files, provide guidance, and train staff in the requirements of the Implementation
9 Plans.” *See id.* at 8. [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Having considered the arguments of the parties, the evidence presented, and the
15 findings of the neutral monitors for medical, mental health, and dental care, the Court finds
16 that Defendant Wellpath has been repeatedly noncompliant and remains noncompliant
17 with the requirements of the Settlement Agreement and Wellpath Implementation Plan in
18 each of the areas identified below. The Court further finds that Wellpath’s noncompliance
19 in these areas places individuals incarcerated at the Monterey County Jail at substantial
20 risk of serious harm. The Court has considered the magnitude of the harm caused by
21 Wellpath’s noncompliance and the duration of Wellpath’s noncompliance, and the Court
22 has determined that this Order is the only remedy likely to bring about timely compliance
23 by Wellpath with the Settlement Agreement and Implementation Plan.

24 After reviewing the reports and findings of the neutral monitors, who are
25 empowered under the Order Appointing Neutral Monitors and Order of Reference to
26 assess Wellpath’s substantial compliance, and based upon the entire record in this case, the
27 Court finds that Wellpath is in sustained noncompliance with the following forty-four

[4252386.1]

1 requirements of the Settlement Agreement and Wellpath Implementation Plan:

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
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[4252386.1]

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[REDACTED]

25 Accordingly, the Court orders as follows:

26 1. Wellpath is hereby enjoined to come into immediate and sustained

27 compliance with the requirements of the Settlement Agreement and Wellpath

[4252386.1]

28

1 Implementation Plan identified above.

2 2. As soon as possible after six months following the entry of this Order, the
3 neutral monitors for medical, mental health, and dental care will evaluate whether
4 Wellpath has come into compliance with the above-identified requirements of the
5 Settlement Agreement and Implementation Plans. The Parties will file the neutral
6 monitors' reports with the Court as soon as practicable thereafter.

7 3. If the neutral monitors find that Wellpath remains noncompliant with any of
8 the above-identified requirements at the end of this six-month period, Wellpath shall be
9 required to show cause at a hearing before this Court why Wellpath should not be held in
10 contempt for violations of this Order. If Wellpath is held in contempt, Wellpath will be
11 required to pay fines of \$25,000 for each of the above-identified requirements with which
12 the neutral monitors found that Wellpath remains noncompliant.

13 4. The neutral monitors will continue to evaluate Wellpath's compliance with
14 the above-identified requirements twice per year as part of their regular monitoring duties.
15 The Parties will file the neutral monitors' reports with the Court. After each monitoring
16 report is filed, if the neutral monitor determines that Wellpath remains noncompliant with
17 any of the above-identified requirements for which the Court has found Wellpath in
18 contempt, Wellpath will be required to pay fines of \$25,000 for each such requirement.

19 5. These fines will continue to be levied after each monitoring report is filed
20 until Wellpath achieves full compliance with this Order. Wellpath will deposit with the
21 Clerk of Court payment for any fines imposed pursuant to this Order within one week of
22 the fine's issuance.

23 6. Pursuant to Paragraph 50 of the Settlement Agreement, and in light of the
24 evidence of Wellpath's recent noncompliance with Implementation Plan requirements
25 related to the verification and continuation of mental health medications, neutral
26 monitoring shall be reinstated for the two provisions of the Implementation Plan related to
27 mental health medication verification and continuation for which Wellpath was released

28 [4252386.1]

1 from monitoring on November 22, 2022. *See* Dkt. 759 at 5-6; *see also* Dkt. 532 at 19.

2 The Court previously found that the Settlement Agreement entered in this matter
3 was narrowly drawn, extended no further than necessary to correct the violation of
4 Plaintiffs’ federal rights, and was the least intrusive means necessary to correct that
5 violation. Dkt. 494 at 4. Based on the evidence presented, the Court finds that this Order
6 is necessary, narrowly tailored, and the least intrusive means of ensuring compliance with
7 the Settlement Agreement. The Court finds that other remedies have not corrected
8 Wellpath’s noncompliance with the Settlement Agreement and Implementation Plans and
9 that this Order is the only remedy likely to bring Wellpath into compliance. The Court
10 therefore finds that this Order is narrowly tailored, extends no further than necessary to
11 correct the violation of Plaintiffs’ federal rights, and is the least intrusive means necessary
12 to correct the violation. *See* 18 U.S.C. § 3626(a)(1)(A).

13
14 IT IS SO ORDERED.

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16 DATED: _____, 2023

17 Honorable Beth Labson Freeman
18 United States District Judge
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