

MICHAEL W. BIEN – 096891
 ERNEST GALVAN – 196065
 VAN SWEARINGEN – 259809
 CARA E. TRAPANI – 313411
 CAROLINE E. JACKSON – 329980
 BEN HATTEM – 335232
 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
 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

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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

**PLAINTIFFS' NOTICE OF MOTION
 AND 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

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[REDACTED]

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NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 24, 2023, at 9:00 a.m., or as soon thereafter as the matter may be heard, Plaintiffs will and hereby do move the Court for an order enforcing the Settlement Agreement and Wellpath Implementation Plan in this case regarding medical care, mental health care, and dental care. Plaintiffs request that the Court enter an order finding that Defendant Wellpath, Inc. (“Wellpath,” formerly California Forensic Medical Group, Inc. or “CFMG”) is noncompliant with the Settlement Agreement and Wellpath Implementation Plan, and requiring: (1) Defendant Wellpath to come into compliance with the Settlement Agreement and Implementation Plans; (2) Defendant Wellpath to show cause after six months why contempt fines should not be issued for any requirements with which it remains noncompliant; and (3) continued monitoring and contempt sanctions until Wellpath comes into compliance.

Plaintiffs’ motion is based on the accompanying Memorandum of Points and Authorities in Support of Plaintiffs’ Motion to Enforce, the Declarations of Cara E. Trapani, Van Swearingen, and Erick Stewart in support thereof, Plaintiffs’ [Proposed] Order Granting Plaintiffs’ Motion to Enforce, any oral argument, and the entire record in this action.

MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

For more than seven and a half years, Wellpath has defied its Court-ordered obligations and provided systemically inadequate care to people incarcerated at the Monterey County Jail (hereafter “MCJ” or “Jail”). The result of Wellpath’s persistent noncompliance with this Court’s orders and its own remedial plan is a death rate at the Jail more than twice the national average and a suicide rate more than three times the average for California jails. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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11 [REDACTED]
12 In May 2020, this Court entered a stipulated order requiring Wellpath to develop
13 “corrective action plans to remedy all the areas for which the neutral monitors have found
14 Defendants to be not in substantial compliance.” Dkt. 671 at 5.¹ When compliance had not
15 improved two years later, the Court issued another stipulated order on June 3, 2022, requiring
16 Wellpath to confer with Plaintiffs about its staffing deficiencies and empowering the neutral
17 monitors to provide training and supervision to Wellpath’s overworked and under-supported line
18 staff through “enhanced monitoring.” See Dkt. 751 at 7. [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 The deficiencies in the medical, mental health, and dental care provided by Wellpath cause
26 daily pain and suffering, including serious medical and dental complications, untreated chronic
27

28 ¹ All citations to documents filed on the Court’s docket refer to ECF page numbers.

1 illnesses, suicide attempts, and deaths. This Court must intervene and order Wellpath to finally
 2 meet its remedial obligations. The Settlement Agreement allows this Court to use “all ...
 3 remedies permitted by law or equity” to compel compliance with the terms of the Settlement
 4 Agreement and IPs. *See id.* at 25. Wellpath’s ongoing refusal to comply with this Court’s orders,
 5 coupled with the continued harms to incarcerated people, shows that only the threat of monetary
 6 sanctions will force private equity-owned Wellpath to take its obligations seriously.

7 Plaintiffs hereby seek an order: (1) confirming the monitors’ findings of noncompliance
 8 with the 44 provisions of the Settlement Agreement and Wellpath IP identified in Section II, *infra*;
 9 (2) ordering Wellpath to come into full and permanent compliance with each of those provisions;
 10 (3) instructing the neutral monitors to evaluate Wellpath’s compliance with these provisions after
 11 six months; (4) ordering Wellpath to show cause why fines of \$25,000 per provision should not be
 12 imposed for each provision with which Wellpath remains noncompliant at that time; (5) requiring
 13 continued neutral monitor evaluations of Wellpath’s compliance twice per year in the course of
 14 their regular monitoring duties; and (6) imposing ongoing fines of \$25,000 per noncompliant
 15 provision after each monitoring period until Wellpath fully and durably corrects its noncompliance
 16 with the Court’s order. *See* [Proposed] Order Granting Pls.’ Mot. to Enforce at 4-5.

17 **FACTUAL AND PROCEDURAL BACKGROUND**

18 **A. By the Parties’ Agreement and the Court’s Orders, Wellpath Must Provide** 19 **Minimally Adequate Medical, Mental Health, and Dental Care**

20 Plaintiffs brought suit in 2013, challenging inadequate medical, mental health, and dental
 21 care, safety and security issues at the Jail, and problems with disability access. *See* Dkt. 431 at
 22 1-2, 6-8. In April 2015, the Court entered a preliminary injunction in favor of Plaintiffs, finding
 23 “significant evidence that Defendants’ policies and practices constitute deliberate indifference to
 24 Plaintiffs’ serious medical needs.” Dkt. 406 at 21. In August 2015, the Court approved the
 25 parties’ Settlement Agreement and ordered Defendants to comply with its terms. Dkt. 494 at 4.
 26 The Court retained jurisdiction and power to enforce the agreement and found that it satisfied the
 27 Prison Litigation Reform Act (“PLRA”), 18 U.S.C. § 3626(a)(1)(A). Dkt. 494 at 4. The Court
 28 also ordered the parties to develop implementation plans that would be “enforceable by the Court

1 as part of the Settlement Agreement” and would contain detailed mandates “to ensure that the
2 class is not exposed to substantial risks of serious harm.” *Id.* at 4, 13. The Court approved these
3 IPs with some modifications in May 2016, *see* Dkts. 528-1 & 532, and appointed the neutral
4 monitors in August 2016, *see* Dkt. 549.

5 **B.** [REDACTED]
6 [REDACTED]
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11 [REDACTED]
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21 **C.** [REDACTED]
22 [REDACTED]
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1 [REDACTED]
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 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED] This cycle of indifference, unkept promises, and patient harm will continue unless and
 9 until this Court orders Wellpath to come into compliance with its obligations and imposes
 10 consequences if Wellpath does not.

11 **D.** [REDACTED]
 12 [REDACTED]

13 Twenty-three people have died at the Jail since the parties entered the Settlement
 14 Agreement²—including J.H., who died on April 7, 2023, and who is the second person to die in
 15 custody this year. Nine of these twenty-three deaths were suicides. *See* Decl. of Van Swearingen
 16 (“Swearingen Decl.”) ¶¶ 3-4. This count of suicides omits D.S. and R.L., both of whom died of
 17 acute water intoxication after compulsive, excessive drinking of water, a symptom of their mental
 18 illness. The Jail’s annual death rate since the Settlement Agreement is 350 deaths per 100,000
 19 people, more twice the national average. *See id.* at ¶ 4. Excluding D.S. and R.L., the Jail’s annual
 20 suicide rate since the Settlement Agreement is 137 suicides per 100,000 people, more than three
 21 times the average for jails in California. *See id.*

22 The Jail’s death and suicide rates are rising. A majority of the post-Settlement suicides
 23 have occurred since 2021. [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]

27 ² This count of deaths omits an individual who died in September 2022 while in the Jail’s custody,
 28 but who was transferred to hospice care several months before his death.

Deaths are only the worst consequences of Wellpath’s disregard for the Court’s orders and the needs of people at the Jail. For every person who dies because of Wellpath’s deficient treatment, many more endure serious harm. This death and suffering alone justifies an order from this Court to enforce the Settlement Agreement and Wellpath IP.

LEGAL STANDARD

A party may be held in civil contempt when, after receiving notice, it fails to take all reasonable steps within its power to comply with a specific and definite judicial order. *See, e.g., Parsons v. Ryan (Parsons II)*, 949 F.3d 443, 454 (9th Cir. 2020); *Melendres v. Penzone*, No. CV-07-2513, ECF No. 2681 at 1-2 (D. Ariz. Aug. 12, 2021). The moving party bears the initial burden of establishing by clear and convincing evidence that the contemnors violated a specific and definite order of the Court. *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983). The burden then shifts to the contemnor to show that it “performed ‘all reasonable steps within [its] power to insure compliance’ with the court’s orders.” *Stone v. City & County of San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992) (quoting *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 404 (9th Cir. 1976)); *see also id.* at 856 n.9.

In addition, the Supreme Court “has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued.” *United States v. N.Y. Tel. Co.*, 434 U.S.

³ Because of the violations in D.S.’s case, Plaintiffs seek reinstatement of monitoring on the medication continuation provisions released from monitoring last year. *See* Dkt. 759 at 5-6.

1 159, 172 (1977). These include civil contempt sanctions, which “may be imposed in an ordinary
 2 civil proceeding upon notice and an opportunity to be heard.” *UMW v. Bagwell*, 512 U.S. 821,
 3 827 (1994). When contempt takes the form of a monetary fine for noncompliance, “it is civil only
 4 if the contemnor is afforded an opportunity to purge”—that is, to come into compliance with the
 5 court’s order before the fine is issued. *See id.* at 829. To that end, the Ninth Circuit has
 6 recognized that civil contempt sanctions “generally take the form of conditional fines.” *Shell*
 7 *Offshore Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 629 (9th Cir. 2016).

8 Along with these requirements, “[c]oercive sanctions may only be imposed ‘after a
 9 reasoned consideration’ of ‘the character and magnitude of the harm threatened by the continued
 10 contumacy, and the probable effectiveness of any suggested sanction in bringing about the result
 11 desired.’” *Parsons II*, 949 F.3d at 457 (quoting *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1148
 12 (9th Cir. 1983)). This obligation is satisfied when the court “document[s] Defendants’ failures to
 13 comply ... and explain[s] that the sanctions were warranted to ‘address Plaintiffs’ injuries
 14 resulting from [Defendants’] noncompliance.’” *Id.* (third alteration in original).

15 ARGUMENT

16 **I. THE SETTLEMENT AGREEMENT EMPOWERS THE COURT TO ISSUE** 17 **PLAINTIFFS’ PROPOSED ORDER TO COMPEL WELLPATH’S COMPLIANCE**

18 In its August 18, 2015 Order granting final approval of the parties’ Settlement Agreement
 19 and incorporating the agreement with “the full force and effect of an order of this Court,” the
 20 Court expressly retained “the power to enforce this Agreement through all remedies provided by
 21 law.” Dkt. 494 at 4; *accord Parsons II*, 949 F.3d at 454. The Court further ordered that the terms
 22 of Wellpath’s IP (Dkt. 532) are enforceable as “part of the Settlement Agreement.” Dkt. 494 at 4.
 23 By the terms of the Settlement Agreement, its provisions and the provisions of the IPs are orders of
 24 this Court. The Court has authority to enforce these orders by all means necessary and appropriate to
 25 prevent their frustration. *See N.Y. Tel. Co.*, 434 U.S. at 172; *Parsons II*, 949 F.3d at 455.

26 The Settlement Agreement imposes only two procedural requirements before enforcement
 27 remedies like contempt sanctions may be imposed. Both are satisfied here. First, Plaintiffs must
 28 notify Defendants of the basis for their belief that Defendants are out of compliance, confer with

1 Defendants, and mediate the issue if Defendants do not provide a satisfactory response. Dkt. 494 at
 2 25-26. Plaintiffs submitted notice to Wellpath on December 16, 2022 and mediated their concerns
 3 with Judge Cousins in accordance with the Settlement Agreement. *See* Swearingen Decl. ¶¶ 5-6.

4 Second, the Settlement Agreement requires that if the Court finds noncompliance, it should
 5 first instruct Defendants “to submit a plan for approval by the Court to remedy the deficiencies
 6 identified by the Court” before imposing additional remedies. Dkt. 494 at 25. This procedure has
 7 been exhausted too. [REDACTED]

8 [REDACTED] the Court ordered Wellpath in May 2020 to create Corrective Action Plans
 9 (“CAPs”) “to remedy all the areas for which the neutral monitors have found Defendants to be not in
 10 substantial compliance” and to submit these plans to the monitors for approval. Dkt. 671 at 5-6.
 11 The Court ordered Wellpath to draft the CAPs within 30 days and implement them within 90 days.
 12 *Id.* at 6. For more than a year, Wellpath failed to finalize the CAPs. *See* Dkt. 751 at 3. Instead,
 13 Wellpath contested their finality for months after the monitors approved the plans, preventing the
 14 CAPs from being finalized until September 2021. [REDACTED]

15 [REDACTED] Plaintiffs’ Proposed Order addresses areas of noncompliance that
 16 have already been included in the remedial process set forth in the Settlement Agreement, and for
 17 which Wellpath’s CAPs “did not remedy the deficiencies.” *See* Dkt. 494 at 25.

18 Plaintiffs’ Proposed Order appropriately affords Wellpath every chance required by law
 19 and by the Settlement Agreement to correct its longstanding noncompliance with its Court-ordered
 20 obligations before any fines would be levied for its violations of the Settlement Agreement and
 21 Wellpath IP. With those procedures observed, the Ninth Circuit has upheld the authority of a
 22 district court to issue contempt sanctions to address noncompliance with the terms of a settlement
 23 with jurisdictional and enforcement provisions identical in all relevant ways to the provisions of
 24 the Settlement Agreement in this matter. *See Parsons II*, 949 F.3d at 454-55.

25 **II.** [REDACTED]
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5 **III. PLAINTIFFS' PROPOSED ORDER COMPLIES WITH THE PLRA**

6 Under the PLRA, prospective relief addressing prison or jail conditions must be “narrowly

7 drawn, extend[] no further than necessary to correct the violation of the Federal right, and [be] the

8 least intrusive means necessary to correct the violation of the Federal right.” 18 U.S.C.

9 § 3626(a)(1)(A). The Court found that the Settlement Agreement satisfied this requirement for

10 enforcement purposes, *see* Dkt. 494 at 4, and the Ninth Circuit has held that orders necessary “to

11 enforce compliance” with a stipulated remedy comply with the PLRA when the underlying

12 stipulation meets the PLRA’s requirements, *Parsons v. Ryan (Parsons I)*, 912 F.3d 486, 501 (9th

13 Cir. 2018). In light of Wellpath’s persistent noncompliance and demonstrated unwillingness to

14 make the changes it must make to achieve compliance, the contempt sanctions that Plaintiffs seek

15 are necessary to enforce the Settlement Agreement and IPs. The sanctions are narrowly tailored to

16 target requirements with which Wellpath has been consistently noncompliant for most or all of this

17 litigation. Finally, because the Court’s prior orders have failed to produce compliance with these

18 requirements, and because Wellpath’s noncompliance is causing urgent and ongoing harm to

19 individuals in the Jail’s custody, these sanctions are the least intrusive means necessary to correct

20 Wellpath’s continued violations of Plaintiffs’ federal rights.

21 **CONCLUSION**

22 Plaintiffs respectfully request that the Court enter the proposed order filed herewith.

23 DATED: May 11, 2023

Respectfully submitted,

24 ROSEN BIEN GALVAN & GRUNFELD LLP

25 By: /s/ Ben Hattem

26 Ben Hattem

27 Attorneys for Plaintiffs

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