IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JIMMY (BILLY) McCLENDON, et al.,

Plaintiffs,

vs. **No. CIV 95-0024 JB/KBM**

CITY OF ALBUQUERQUE, et al.,

Defendants,

vs.

E.M., R.L. W.A. D.J., P.S., and N.W. on behalf of themselves and all other similarly situated,

Plaintiff-Intervenors.

MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT PAY MONETARY PENALTIES FOR VIOLATING THE COURT'S CONSENT DECREE REGARDING MEDICAL CARE

Medical Care at the Bernalillo County Metropolitan Detention Center (MDC) is unconstitutional. Bernalillo County Defendant (Defendant) is violating the new medical corrective action plan (CAP) designed to "establish a strong foundation for the medical program, ensuring timely and reliable access to care in a safe environment." *See CAP: MDC Medical Care* [1776-2 at 1]. Plaintiffs, Plaintiff Intervenors (Plaintiffs) and Defendant negotiated this new CAP and it was adopted as an Order of the Court. *See Amended Stipulated Settlement Agreement Resolving Doc. 1468* [Doc. 1785]. The CAP contains clear action items, timelines, and requirements for initial and monthly updates to the court's medical expert, and items to be provided as evidence of completion. *See generally* [Doc. 1776-2]. Defendant failed to comply with 12 of the first 17

deadlines outlined in the CAP. By clear and convincing evidence, Defendant violated and continues to violate the unambiguous order of the Court.

Between January 2024 and the date of this filing, 12 class members have died in MDC custody.[1] *See Notice of Class and Subclass Member Deaths Since June 2023* [Doc. 1764]. In both his December 2024 and April 2025 site assessments, the Court's medical expert Dr. Muthusamy Anandkumar (Dr. Kumar) found widespread noncompliance with the orders of the Court and found that medical care at MDC was unconstitutional. *See generally December 2024 Report* [Doc. 1730]; *see also April 2025* Report [Doc. 1769]. Swift implementation of the *Amended Stipulated Settlement Agreement* and the new CAP is necessary to protect residents of MDC from ongoing harm. Plaintiffs have repeatedly negotiated with Defendant to resolve ongoing disputes regarding noncompliance with the Orders of the Court regarding medical care to no avail. At this time, the Court should impose monetary penalties sufficient to coerce immediate and unwavering compliance.[2]

[1] Ernest Tafoya, 62, is the 12th person. He died on August 17, 2025. The following information is from sources other than MDC. Mr. Tafoya was alone in a cell detoxing from opiates. In the afternoon, he complained of weakness, inability to eat, and stated he was dying. In the evening, when he was being taken to medical by corrections officers he had a seizure and began to vomit coffee grounds emesis. He died shortly after. OMI called his cause of death toxic effects of methamphetamine with chronic substance abuse, hypertensive cardiovascular disease, and COPD contributing.

[2] In compliance with D.N.M. LR Civ. 7.1(a), Plaintiffs contacted Defendant and Defendant opposes this motion. The City of Albuquerque has agreed that Plaintiffs and Plaintiff Intervenors need not consult the City when they file a "motion directed solely at the County Defendants." [Doc. 1608] The City has stipulated that it takes no position on any motion directed solely at the County Defendants. *Id*.

I. BACKGROUND

A. Care at MDC Remains Unconstitutional and Class Members Continue to be Harmed.

Defendant has consistently failed to comply with the Court's orders regarding medical care at MDC. This is Plaintiffs' second motion for an order to show cause since the Court entered a consent decree regarding medical care on January 17, 2023 [Doc. 1589, 1585-2]. In April 2023, Plaintiffs filed a *Motion for Order to Show Cause* for noncompliance with the January 2023 CAP and it was resolved by agreement of the parties. *See* [Docs. 1599 & 1622].

In July 2023, Defendant's new medical provider, the University of New Mexico Hospital (UNMH), began providing medical care at MDC. Defendant and its provider did not meet the deadlines outlined in the January 2023 CAP [Doc. 1585-2], nor did they avail themselves of the mechanism contained therein to address deadlines that Defendant determined became "unworkable." Nonetheless, the Parties collaborated with UNMH to negotiate new deadlines and presented those to the Court. *See Joint Motion Regarding Medical CAP Deadlines* [Doc. 1703; 1703-1]. On April 9, 2024, the Court entered an order modifying the CAP deadlines as agreed upon by the parties. *Stipulated Order Granting Joint Motion Regarding Medical CAP Deadlines* [Doc. 1707]. Despite these extensions, Defendant did not implement the CAP.

Dr. Kumar's December 2024 Assessment of Medical Care at MDC found widespread noncompliance with the orders of the Court.[3] [Doc. 1730] At the same time, the rate at which class members were dying at MDC was increasing.[4] Immediately following Dr. Kumar's October 2024 visit the following class members died:

[3] The December 2024 Assessment followed the October 2024 site visit.
[4] All information contained herein is from records received from entities other than MDC.

- 11/14/2024: S. Zamora, 58, died of the toxic effects of methamphetamine in the intake area of MDC. He had been transported by bus from the Prisoner Transport Center and could barely walk or sit up when he entered the facility but did not receive prompt care.
- 11/18/2024: D. Harry, 30, died of chronic ethanol abuse alone in a cell in the mental health unit less than 24 hours after being admitted to the jail. According to the autopsy, in the hours prior to her death she reported that she felt weak and was detoxing. The autopsy report notes that abruptly stopping alcohol can cause "life-threatening withdrawal symptoms." Residents reported that the watches of Ms. Harry, required for individuals withdrawing in cells, were insufficient.
- 12/28/2024: V. Denetso, 44, died of sepsis due to peritonitis as a result of a perforated sigmoid colon in the setting of diverticular disease. Her autopsy described her abdomen filled with infection and liquid stool. Residents reported that she was in severe pain for days and took extreme measures, including threatening self-harm, in an effort to try to get staff to address her medical needs.
- 1/1/2025: R. Mills, 41, died of the toxic effects of methamphetamine within a day of his incarceration while in a medical cell. Law enforcement reports indicate that during the scan of Mr. Mills into the facility an anomaly was seen. The autopsy report confirms that he had drugs concealed in his body at the time of his death.
- 1/29/2025: Z. Hercey, III, 54, died of staphylococcus aureus pneumonia in the setting of Influenza A infection. He had been in custody for over two months.

In the midst of these deaths, Plaintiffs began negotiations for the new CAP as the most swift and direct way to try to remedy systemic problems with the medical care at MDC.

Dr. Kumar assessed MDC again in April 2025. Care remained unconstitutional. *See* [Doc. 1769 at 13]. He noted that "there seem[ed] to be inadequate effort in addressing" priority recommendations from his last report. *Id.* at 3. His findings included that there was not a "dependable system in place to monitor healthcare demand and capacity, which hinders [Defendant's] ability to make informed decisions and implement measurable improvements." *Id.* Defendant needs to act with "a sense of urgency" to address the delays in medical care and "develop a strategic and methodical approach to establish a reliable, sustainable, medical program." *Id.*

B. The Parties Bargained for a New Enforceable Medical CAP Drafted by the Court's Medical Expert

In the wake of Dr. Kumar's 2025 findings, the "Parties agreed to have [Dr. Kumar] draft a new corrective action plan." [Doc. 1776] The Parties agreed that the CAP "should be implemented promptly without [the] delay, expense and distraction of an evidentiary hearing." [Doc. 1785 at 2, ¶ 3] The purpose of the CAP "is to establish a strong foundation for the medical program, ensuring timely and reliable access to care in a safe environment." [Doc. 1776-2 at 1] The CAP identifies 17 discrete areas to be addressed.[5] *See generally* [Doc. 1776-2]. For each area, the CAP identifies Action Items, Time Frames, documentation to be provided to the monitor initially and then on a monthly basis, and documentation to be provided as evidence of completion. *Id.* The CAP went

[5] These are enumerated in the CAP as follows: 1. Staffing, 2. Staffing Levels, 3. Clinical Guidelines, Nursing Guidelines, 4. Policy & Procedures, 5. Operational Supervision, 6. Orders and Tasks, 7. Documentation Templates, 8. Clinical Space, 9. Medical Records, 10. Patient Monitoring and Safety – Intake Area, 11. Patient Safety and Monitoring – PTC, 12. High-Risk/Complex Patients – Comprehensive Care Planning, 13. Patient Safety – Handoffs, 14. Withdrawal Management and MOUD, 15. CQI – Data Driven Decision Making – Performance Metrics, 16. Special Needs, ADA, and Custody-Related Medical Orders, 17. CQI – Mortality and Morbidity Reviews.

into effect on August 18, 2025. [Doc. 1776 at 2] Thus, all dates for "Time Frames" are calculated from August 18, 2025.

The order implementing the new CAP provides a requirement for Defendant to notify the Court's expert and class counsel if CAP requirements or deadlines have become "unworkable" and also provides a process for requesting extensions of time to comply and resolving those disputes. [Doc. 1785 at p. 4, ¶¶ 3-4]; *see also* [Doc. 1589, pp. 3-4, ¶¶ 3-4] Defendant has not availed itself of the processes set forth in the order.

C. Defendant violated and continues to violate the Court's orders.

Each of the 17 CAP areas contain requirements for the "Monthly Status Update to Monitor: (by the 14th of every month)" and provide details for an "Initial" update and a "Monthly" update. [1776-2] The Initial Production for *each* of the 17 areas required Defendant to provide, at a bare minimum, "[a] project plan tailored to this effort" – the effort being the action items identified for that area of the CAP. For example, Area 1 is "Staffing Plan." [Doc. 1776-2 at 2].

Defendant provided its Initial Update on September 16, 2025. It only provided 5 out of 17 of the required project plans covered by the CAP. Defendant stated "[i]nitial efforts will be centered around [these 5] as they are critical to all other project plans." *See* **Exhibit 1**, *Written CAP Plan*. As to these 5 areas, Defendant stated "we will progress through them as we are able based on limited available human resources." ***Id.*** For an additional 3 CAP areas, it stated those "will be worked on once we have made considerable progress on the 5." ***Id.*** Defendant explained another CAP area "will be addressed as a separate project," and all remaining CAP areas would be "rolled into" efforts to improve the intake process. ***Id.*** Despite the CAP having clear timelines, Defendant explained that the due dates set forth in the initial project plans for the 5 areas it produced plans

for included only "tentative due dates" and failed to provide any other plans reflecting timelines as required by the CAP. ***Id.***

Plaintiffs alerted Defendant that its update and its plan were insufficient and set out specific concerns. *See* **Exhibit 2,** *Loewe Sept. 29, 2025 Email*. Defendant did not respond. The Parties discussed the CAP and its requirements at Dr. Kumar's October 2025 site visit. Plaintiffs made clear that this was a negotiated CAP with required deadlines. It was not optional.

Defendant provided its second update to Dr. Kumar on October 14, 2025. Defendant again failed to comply with the requirements of the negotiated CAP, and again *only* provided plans for the same 5 out of 17 CAP areas. As this was a monthly production (rather than an initial production), Defendant was also required to provide additional documentation. It did not provide the required documentation.[6] Defendant claimed completion with areas of the CAP, but did not provide evidence of completion as required by the CAP.

Even in the 5 areas where Defendant presented initial project plans, it was noncompliant and lacked the sense of urgency Dr. Kumar identified as necessary to move the plan forward. *See April 2025 Report* [Doc. 1769 at 3]. For instance, *Staffing* is the first area of the CAP. [Doc. 1776-2 at 2] The CAP required Defendant have an approved staffing plan finalized within 60 days of the agreement. *Id.* 60 days from the date of agreement was October 17, 2025. The only action item was to "[c]onduct a staffing analysis with an expert in correctional settings, focusing on clinical, non-clinical, and support staff." *Id.* The project plan Defendant provided showed that Defendant did not even start contacting experts to conduct a staffing analysis until at least September 18, 2025, and then the expert Defendant contacted declined to do the analysis. *See* **Exhibit 3,** *CAP 1*

[6] Defendant provided CAP plans for areas 1, 2, 3, 5, & 11, and documents titled CQI Minutes 10.2.2025, CQI Charter, Intake Process Improvement Project, and PTC process map.

– *Staffing Plan as produced Nov. 17, 2025.*[7] The next step was to reach out to another expert and Defendant set an end date for that task of October 23, 2025 – a date past the Staffing Analysis due date of October 17, 2025. *See* **Ex. 3.** As of the November 17, 2025 CAP production**,** Defendant abandoned the requirement that it conduct the staffing analysis with "an expert in correctional settings" and instead conducted its own analysis, which it claims it completed between October 23 and October 31, 2025.[8] ***Id.*** Nevertheless the CAP requires Defendant to have an approved staffing plan finalized and signed within 60 days of the agreement (October 17), yet Defendant set the date of completion for February 27, 2026 in violation of the CAP.

Following Defendant's October CAP Update, Plaintiffs provided Defendant notice that it was not compliant with the medical CAP. *See* **Exhibit 4**, *Nov. 6, 2025 Loewe Letter*. Plaintiffs addressed some of the deficiencies. *See* **Ex. 4**. In preparation for Defendant's third monthly update (November 14), Plaintiffs stated:

> The CAP sets out clear timeframes and includes lists of what is to be produced initially, monthly, and what is required to show completion. Please review the Time Frames, Monthly Production, Evidence of Completion, and Addendum to ensure compliance with the CAP.
>
> To date, Defendant is non-compliant with the CAP. Defendant is non-compliant because it has not provided the records and information required in the monthly CAP update. Defendant is also non-compliant because deadlines have passed *and*

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[7] This PDF format with miniscule type is how Defendant provided the project plans to the monitor. To read, open in Adobe and zoom in. Plaintiffs provide the plan as updated through November 17, 2025.

[8] Plaintiffs object to Defendant abandoning the use of an expert in correctional settings. The note in the November 17th CAP production states that "In [h]is visit, Dr. Kumar stated that we can do an internal staffing analysis. It does not have to be with a consultant." It is Plaintiffs' recollection from the October 14 visit, that conducting an internal staffing analysis stop-gap measure until Defendant could engage an expert as the consultant Defendant sought to engage declined the work. Plaintiffs will address with the expert and the parties. Regardless, this is a change in the CAP requirements and Defendant did not utilize the mechanisms in the Order for if it determines a task or deadline has become unworkable which requires notifying Plaintiffs before a deadline is missed or if a task needs altering. [Doc. 1785 at 4, ¶ 4] The November 17, 2025 update is the first time Plaintiffs learned of this change.

> Defendant indicates in each of the 5 plans provided that it intends to be non-compliant with future deadlines. The Court Order has a process to address instances where Defendant determines that a deadline set forth in the CAP has become "unworkable." Doc. 1785, ¶ 3(a). To date Defendant has not availed itself of this process.

Ex. 4. Seeking to avoid litigation, Plaintiffs provided Defendant a copy of the Amended Stipulated Agreement [Doc. 1785] and proposed that for deadlines already passed:

> Defendant immediately utilize the process set out in Doc. 1785 ¶ 3(a) and by **no later than COB on November 13, 2025** alert Plaintiffs which deadlines it has already missed and propose new deadlines…For all items required to be produced by the CAP, please produce these in the November 14, 2025 update.

Ex. 4. Defendant did not contact Plaintiffs regarding the deadlines by November 13, 2025 or any time thereafter.

On November 17, 2025, Defendant provided its third update to the medical expert. Again, Defendant provided only the same 5 plans. *See* **Exhibit 5,** *Screen Shot of Nov. Production*. Again, the plans contained timelines that are non-compliant with the Court Order. Again, Defendant failed to provide documentation required for the monthly updates. Again, Defendant claimed completion of items, but failed to provide evidence of completion as outlined in the CAP.

Due to Defendant's on-going failure to comply with provisions of the medical CAP and the *Amended Stipulated Settlement Agreement* Plaintiffs bring this *Motion for Order to Show Cause*. Over the last three years, Plaintiffs have suffered harm, have died or witnessed their fellow class members die, and have gone without adequate medical care in violation of their federal rights. Plaintiffs negotiated this new medical CAP in good faith and the Parties engaged the Court's medical monitor with subject matter expertise to craft the CAP. The Parties entered an agreement that included mechanisms for addressing issues that arise, and Defendant has not used them. Given the ongoing violations and non-compliance, even at the advent of a new medical CAP, the

imposition of monetary penalties for noncompliance are necessary to induce Defendant's obedience with the Orders of the Court.

II. ARGUMENT

Defendant's ongoing violations of the Court's Order and medical CAP are indisputable. Defendant's own documentation makes these violations clear. Defendant has flouted the requirements of the CAP and failed to use the mechanisms of the Order to address any timelines that have become unworkable. This Court should issue an Order to Show Cause why Defendant should not be found in contempt and prospectively sanctioned for ongoing failures to comply with the Court's order implementing the medical CAP. After hearing from the Defendant, the Court should issue an order: (1) finding Defendant in civil contempt for noncompliance with the Court's past order; and (2) imposing prospective sanctions for current and future noncompliance.

A. Standards for Civil Contempt

"Civil contempt of court is the disregard of judicial authority, which a court may punish as an inherent and integral element of its power." *Pueblo of Pojoaque v. State of New Mexico*, No. Civ. 15-0625 JB/GBW, 2016 WL 3135644, at *11 (D.N.M. Apr. 21, 2016) (Browning, J.). "[I]t is firmly established that the power to punish contempt is inherent in all courts." *Chambers v. NASCO, Inc.,* 501 U.S. 32, 44 (1991); *Brown v. Plata*, 563 U.S. 493, 542 ("A court that invokes equity's power to remedy a constitutional violation by an injunction mandating systemic changes to an institution has the continuity duty and responsibility to assess the efficacy and consequences of its order."); *see also* 18 U.S.C. § 401 ("A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other as . . . [d]isobedience of a lawful writ, process, rule, decree, or command."). A federal court may hold any party failing to comply with a specific order in contempt. Fed. R. Civ. P. 70. In this way,

federal courts ensure compliance with consent decrees the court has approved. *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 440 (2004).

Here, Plaintiffs seek civil contempt "to compel or coerce obedience to a court order." *Acosta v. Paragon Contractors Corp.*, 884 F.3d 1225, 1238 (10th Cir. 2018). "[A] contempt sanction is considered civil if it 'is remedial, and for the benefit of the complainant.'" *F.T.C. v. Kuykendall*, 371 F.3d 745, 752. (citation omitted). While "a court is obliged to use the least possible power adequate to the end proposed[,]" where the purpose of the sanction is coercive, "the court must consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired." *CFTC v. Lien*, No. 1:19-cv-1153 WJ/SCY, 2020 WL 6324364, at *1 (D.N.M. 2020) (internal quotation marks and citations omitted). The Supreme Court has held that monetary penalties paid as per diem fines are a "close analogy" to the paradigmatic civil contempt sanction because "once the jural command is obeyed, the future, indefinite, daily fines are purged." *Bagwell*, 512 U.S. at 829; *see also Frew*, 540 U.S. at 440 ("If a state agency refuses to adhere to a court order, a financial penalty may be the most effective means of [e]nsuring compliance." (Citation omitted)).

Courts have also identified more severe contempt remedies in jail and prison conditions litigation. *See e.g.*, *Plata v. Schwarzenegger*, 603 F.3d 1088, 1098 (9th Cir. 2010) (appointing a receiver to take over operation of the facility); *Brown v. Plata*, 563 U.S. 493 (2011) (ordering the release of prisoners); *Pugh v. Locke*, 406 F. Supp. 318, 331 (M.D. Ala. 1976), rev'd on other grounds sub nom. *Alabama v. Pugh*, 438 U.S. 781 (1978) (closing prisons,); *United States v. Hinds County*, No. 3:16-CV-489-CWR-RHWR, 2022 WL 3022385, at *7 (S.D. Miss. July 29, 2022) (imprisoning the officials that operate defunct jails for a week or more in their own facilities).

"[C]ourts in civil contempt proceedings may proceed in a 'more summary fashion' than in an 'independent civil action.'" *Kuykendall*, 371 F.3d at 756 (citation omitted). The alleged

contemnor must be granted an opportunity to be heard, and the Court must make findings of fact and conclusions of law consistent with Fed. R. Civ. P. 52(a), *see id.* at 760, but "a full evidentiary hearing is not required where there are no material facts in dispute and neither party has requested an evidentiary hearing." *Hart's Rocky Mtn. Retreat, Inc. v. Gayhart*, No. 1:06–cv–01235–WDM–BNB, 2007 WL 2491856 at *1 (D. Colo. 2007) (*citing Wyoming v. Livingston*, 443 F.3d 1211, 1224 (10th Cir.2006); *see Harris v. City of Philadelphia*, 47 F.3d 1311, 1322 (3d Cir. 1995) ("[D]ue process does require notice and a hearing before a finding of contempt is made and before the imposition of contempt sanctions so that the parties have an opportunity to explain the conduct deemed deficient … and a record that will be available to facilitate appellate review. … For an indirect contempt, such as failure to obey a court order, it is appropriate to give notice by an order to show cause and to hold a hearing." (Internal quotation marks and citations omitted)).

To prove civil contempt and entitlement to sanctions, the movant has the burden to show by clear and convincing evidence, "[1] that a valid court order existed, [2] that the defendant[s] had knowledge of the order, and [3] that the defendant[s] disobeyed the order." *Kuykendall*, 371 F.3d at 756-57. To support civil contempt, the order being enforced must be "clear and unambiguous." *Reliance Ins. Co. v. Mast Const. Co.*, 84 F.3d 372, 377 (10th Cir. 1996).

B. Defendant has knowledge of a valid court order that is clear and unambiguous.

Plaintiffs have established all three elements necessary for the Court to sanction Defendant. First, there is a valid court order that Defendant participated in developing, stipulated to, and submitted to the Court. *See* [Docs. 1785, 1776, 1776-1, 1776-2]. Defendant knows of the Order and agreed to be bound by it. *See Kuykendall*, 371 F.3d at 755 ("By agreeing to an ongoing court supervised [] [i]njunction, prospective in nature, the defendants were aware they were subjecting themselves to the lowered procedural protections available in the event of contempt proceedings.") (Citation omitted).

Second, the Order on the Medical CAP and the CAP itself are clear and unambiguous. *Reliance Ins. Co. v. Mast Const. Co.*, 84 F.3d 372, 377 (10th Cir. 1996) (stating an order being enforced must be "clear and unambiguous."). The CAP methodically provides action items, time frames for those items to be completed, and the documentation required to be provided to the expert. [Doc. 1776-2] The Order adopting the CAP is also clear and unambiguous. It provides that Defendant will implement the CAP and will do so "promptly and without delay." [Doc. 1785 at 2 ¶3, 3 ¶1(b)] The timelines in the CAP are thus part of the Court's Order. Additionally, the Order provides mechanisms for addressing instances where Defendant "determine[s] that a deadline set forth in the CAP has become unworkable" or if Defendant "determine[s] that task set forth in the CAP has become unworkable." [Doc. 1785 at 4 ¶3(a), ¶4] Defendant is aware of these provisions as Defendant helped craft and stipulated to the Order. Defendant is also aware of these provisions as Plaintiff has written to Defendant and urged it utilize them. *See* **Ex. 4,** *Nov. 6 Loewe Letter*.

The Order is equally clear that if Defendant failed to "comply with the timelines or tasks in the CAP, Plaintiffs…may present the issue(s) directly to the Court by filing a motion seeking to remedy the ongoing noncompliance…" [Doc. 1785 at 5 ¶5]. This is the provision under which Plaintiffs now move. Because Defendant is aware of the Court order and that order is clear and unambiguous, Plaintiff has satisfied the first two elements necessary for this Court to impose sanctions.

C. Defendant is Violating the Order.

The third element of contempt – whether Defendant is violating the Court's order – is established with Defendant's own records.

a. Defendant failed to provide project plans for 12 CAP areas.

As set forth above, the CAP required Defendant to provide an initial status update to the medical expert. [1776-2], *supra* (I)(C). The initial update for *each* of the 17 areas required Defendant to provide, at a bare minimum, "a project plan" for that area. To date, Defendant has

provided only 5 out of 17 project plans. *See Screen Shot of Nov. Production,* **Ex. 5.** Thus, Defendant violated and is violating this provision of the Court order as it is not implementing the CAP promptly, without delay, and in compliance with the timelines for those 12 areas.

b. Defendant failed and is failing to comply with other deadlines of the CAP.

Each area of the CAP contains specific time frames for the completion of an action item or items and Defendant is non-compliant with these time frames. For example, Area 1 – Staffing required Defendant to have an "[a]pproved staffing plan finalized and signed within 60 days of the agreement." [1776-2 at 2]. Dr. Kumar instructed, and the Parties agreed that dates are calculated from August 18, 2025, so the approved and finalized staffing plan was due on October 17, 2025. *See* [1776] (stating August 18 is the start date). Defendant has not completed a staffing plan and has indicated that it would not have one complete until February 27, 2026. *See* **Ex.** 3. Defendant's failure to comply with this provision has a cascading effect, leading to additional failures as the CAP methodically builds upon itself. For instance, Area 2- *Staffing Levels* required Defendant to "[a]chieve 90% of staffing levels of the approved written staffing plan that aligns with the findings of the staffing analysis withing 90 days." [1776-2 at 3]. However, Defendant has not and cannot comply with Area 2- *Staffing Levels*, because it failed to conduct the requisite staffing analysis and create an approved and finalized staffing plan as required by Area 1 – *Staffing*.

Another example is Area 11 – which addresses Patient Safety and Monitor at the Prisoner Transport Center (PTC). *See* [Doc. 1776-2 at 16]. The safety of patients waiting at the PTC and diversion of sick patients is crucial to the safety of individuals and to reduce the burden on medical staff at MDC. The previous CAP required staffing of the PTC, but Defendant failed to comply. The Action Items in the current CAP for Area 11 are to:

> -Ensure patient safety by monitoring individuals at the PTC, addressing medical concerns proactively, and providing timely care while they await further processing.
> -Assign appropriate clinical staff to the PTC to ensure continuous monitoring and care delivery.
> -Establish a process to track and monitor key metrics…

[Doc 1776-2 at 16]. The Time Frame was that "[t]he patient monitoring is established and implemented at intake, and at least 95% staff will be trained on new forms within 30 days" of August 18, 2025. Evidence of completion included a copy of logs showing that the hourly PTC rounds are documented and reviewed by supervisors and a report indicating that 95% of the required staff have completed the training. [Doc. 1776-2 at 16] To produce a log showing that rounds are being conducted at the PTC, the PTC would have to be staffed and open. It is not.

Defendant's project plan for PTC Staffing and Patient Safety makes clear that this deadline was not met as the hiring for PTC staff did not begin until September 18, 2025, 30 days after the August 18, 2025 start date, and ends on November 30, 2025, and training for team members began on October 15, 2025, nearly 60 days after the August 30, 2025 start date, with a completion date of December 31, 2025. *See* **Exhibit 6**, *CAP 11 – PTC Staffing and Patient Safety*. The CAP required that "Training Materials/Training Plan" be provided as part of the Monthly Status Update to the Monitor, but none have been provided. [1776-2 at 16] Defendant has provided no evidence that monitoring is occurring at the PTC.

Area 5 – Operational Supervision addresses daily oversight for each medical area/service/program. [Doc. 1776-2 at 6] It sets out action items, with timelines, and documents to be provided to the monitor in the monthly updates which reflect compliance with those timelines. *Id.* Although Defendant claims completion of many tasks in this area, Defendant has not provided the requisite documentation in its updates. In fact, Defendant has provided no documentation for Area 5. Additionally, its project plan reflects deadlines for action items in December 2025 and into

2026, well outside of the outermost time frame of 90 days from agreement as set forth in the CAP. **Exhibit 7,** *CAP 5 – Operational Supervision*.

Defendant is missing deadline after deadline in the 5 areas for which it has submitted plans. Defendant is also violating the deadlines in the CAP for the 12 areas for which it has not even created project plans yet. Each of those areas had timeframes for items that are past due or soon will be past. *See generally* [Doc. 1776-2] In areas where Defendant claims compliance with the deadline, it has not provided evidence of completion as required by the CAP. *See, e.g.,* **Ex. 1** (email requesting Defendant provide evidence that the nursing guidelines required by Area – 3 *Clinical Guidelines; Nursing Guidelines* have been identified, approved, and built out in the electronic medical record as required by the CAP [Doc. 1776-2 at 4]).

Defendant has taken a flexible approach to the deadlines set forth in the CAP, and is granting itself unilateral extensions without following the mechanisms for addressing deadlines in the Order. After years of negotiating and collaborating, Plaintiffs now seek sanctions to induce Defendant to comply.

c. Defendant is not complying with the Order regarding deadlines

Not only is Defendant missing deadlines and developing plans with deadlines well outside of those contained in the Order, it is also violating the Order by failing to utilize the mechanisms set out therein if a timeline or task becomes unworkable. For example, the Order requires Defendant to "alert counsel for Plaintiff and Plaintiff Intervenors and the Court expert" if a task "has become unworkable." [Doc. 1785 at 4, ¶ 4] Defendant has not alerted Plaintiffs or taken any similar steps. If Defendant determined a deadline "has become unworkable," Defendant is to "alert Plaintiffs "at least a week prior to the deadline and propose a new deadline." [Doc. 1785 at 4, ¶

3(a)] Defendant has never done so. Thus, Defendant is not only failing to complete the substantive actions required by the CAP, it is also violating the procedural requirements of the Order.

d. Monthly Productions

The Order requires monthly reporting. Defendant's permanent contract compliance monitor is required to "report directly to the County Commission and County Manager on a monthly basis, with copies of the report to be provided to Plaintiffs…" [Doc. 1765 at 5, ¶ 8 (c)] Defendant has not provided this report to date under the new Order. Ideally, a contract monitor would keep Defendant and the medical provider on task and in-line with the obligations of *McClendon* and keep the top decision makers informed so that they can ensure compliance. We have not been provided with evidence of this.

The CAP itself also contains Monthly Status Updates which outline what is to be provided. Defendant is not complying with this provision of the Order. On November 17, 2025, Defendant provided only the 5 updated plans, an "Intake Process Improvement Project," and CQI Meeting Minutes for November 6, 2025. These items do not meet the monthly document production requirements of the CAP. *See generally* [Doc. 1776-2].

III. After hearing from Defendant, the Court should Order Reasonable Monetary Penalties to Coerce Compliance.

Defendant is in violation of multiple provisions of a valid and unambiguous order. These violations harmed and will continue to harm class members until this Court forces compliance. Defendant requires such coercion as it is violating the CAP and the amended stipulated agreement, both entered into in the midst of ongoing findings by the Court's expert that medical care at MDC is unconstitutional. This CAP was negotiated over many months and after Defendant failed to comply with previous corrective action plans and the recommendations of court appointed experts. Thus, when the Parties consented to this CAP as an enforceable order of this Court, they ensured

that it included both clear deadlines and a mechanism for enforcement of deadlines. In so doing, the Parties intended to bind Defendant and subject it to a finding of civil contempt in the event of noncompliance. *See McClendon v. City of Albuquerque*, No. 95 CV 24 JAP/KBM, 2016 WL 9818311, at *5 (D.N.M. Nov. 9, 2016) ("A consent decree is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees. A party to a consent decree that is aggrieved by the other party's noncompliance may apply for an order to show cause why the noncompliant party should not be held in contempt. Civil contempt sanctions are the primary means of compelling compliance with the provisions of such a decree." (internal quotation marks and citations omitted)).

Defendant agreed to these deadlines in exchange for avoiding litigation on Defendant's noncompliance with provisions of COA1. [Doc. 1776, 1785 at 2] As it stands, Defendant's conduct in the implementation of the CAP reflects the exchange of an empty promise to ward off litigation. This has been Defendant's repeated practice. *See* [Doc. 1599 at 49] (outlining the history of litigation as of April 2023). Plaintiffs have sought to be flexible, have sought to avoid litigation, and have included mechanisms that allow for flexibility that Defendant has not utilized. Defendant now must be coerced to comply with the Order of the Court and deliver on implementation of the CAP.

While a court imposing contempt sanctions "is obliged to use the least possible power adequate to the end proposed[,]" where the purpose of the sanction is coercive, "the court must consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired." *CFTC v. Lien*, No. 1:19-cv-1153 WJ/SCY, 2020 WL 6324364, at *1 (D.N.M. 2020) (internal quotation marks and citations omitted). Here, severe sanctions are justified since the parties agreed to have the Court's expert craft a CAP that would provide simply the basic foundation for a functioning medical system at MDC after years of Defendant's inability to substantially comply with its obligations under COA1 to provide

constitutional medical care and Defendant has simply not complied. Rather, Defendant has treated the CAP's obligations and deadlines as optional, a project to be done as it is able, rather than as ordered. Nevertheless, at this time, Plaintiffs and Plaintiff Intervenors are requesting coercive monetary penalties that can be purged by future compliance, which are generally understood to be the least intrusive remedy for civil contempt. *See Markus v. Rozhkov*, 615 B.R. 679, 711 (S.D.N.Y. 2020) ("Financial sanctions, as a category, are relatively mild."). In prison and jail reform litigation, other enforcement alternatives, such as ordering institutions into receivership, closing prisons, and issuing release orders, are typically reserved for situations in which the court has found that monetary penalties would be ineffective. *See United States v. Hinds County*, No. 3:16-CV-489-CWR-RHWR, 2022 WL 3022385, at *6-7 (S.D. Miss. July 29, 2022) (describing monetary sanctions as a "lesser sanction" that is "prominent in the case law," and imposing a receivership after concluding that monetary sanctions would be inadequate to cure the contempt). This Court is well within its discretion to impose the lesser penalty of monetary sanctions, with collected funds directed to remedy medical care at the facility. *See, e.g., Parsons v. Shinn*, No. CV-12-00601-PHX-ROS, 2021 WL 718102, at *4 (D. Ariz. Feb. 24, 2021), appeal dismissed sub nom. *Jensen v. Shinn*, No. 20-17021, 2021 WL 7909287 (9th Cir. Nov. 16, 2021) (imposing $1.10 million contempt sanction and directing that funds paid as sanctions will be ordered, in part, to complete a systemic analysis of health care provided to class members); *Parsons v. Ryan*, No. CV-12-0601-PHX-DKD, 2018 WL 3239691, at *11–12 (D. Ariz. June 22, 2018) (imposing monetary sanctions and ordering that funds collected be used to further compliance with the stipulation regarding medical care), *aff'd*, 949 F.3d 443 (9th Cir. 2020); *Benjamin v. Fraser*, No. 75 CIV. 3073 (HB), 2002 WL 31845111, at *12 (S.D.N.Y. Dec. 16, 2002) (ordering fines for failure to provide medical review to be paid into prisoners' accounts); *Palmigiano v. DiPrete*, 710 F. Supp. 875, 887–90 (D.R.I. 1989) (imposing fines and ordering that funds collected be used to pay the bail of indigent detainees in order to reduce overcrowding), *aff'd*, 887 F.2d 258 (1st Cir. 1989); *Morales Feliciano v. Rosello Gonzalez*, 124 F. Supp. 2d 774, 788 (D.P.R. 2000) (entering monetary sanctions and ordering

that funds deposited with the court be used to remedy inadequate prison conditions); *Essex Cnty. Jail Inmates v. Amato*, 726 F. Supp. 539, 550 (D.N.J. 1989) (imposing millions of dollars in coercive penalties).

The Court has options as to how it could administer the funds. In the past, this Court has indicated it would place funds in a federal account that would not be administered. The Court is within its discretion to decide whether funds will not be administered or whether they will be used in a way that could benefit both Parties and bring Defendant closer to compliance, such as having the Court's expert identify areas for which the funds should be spent.

Plaintiffs propose that the Court impose coercive monetary sanctions on Defendant to be paid into a fund overseen by the Court and disbursed to improve medical care at MDC based on the recommendations of the Court's expert and approved by the Court. Plaintiffs defer to the Court as to the amount the Court would consider coercive. Plaintiffs have previously resolved a similar motion for order to show cause with Defendant committing $800,000.00 to be used for improvements at MDC. *See Order and Stipulated Settlement Agreement Resolving Doc. 1599* [Doc. 1622 at 3]. Defendant was slow to disburse this money, and it was not a sufficient penalty to induce compliance with the orders of the Court. Any sanctions ordered by the Court would continue to accrue until Defendant ceases violating the *Amended Stipulated Settlement Agreement* and the incorporated CAP.

IV. Conclusion

For the foregoing reasons, and to protect the rights of class members, Plaintiffs move the Court to:

1. Order Defendant to show cause why it should not be adjudged in contempt and prospectively sanctioned for ongoing failures to comply with the Court's Order implementing the new medical CAP;

2. After hearing from Defendant, issue an order finding Defendant in civil contempt for noncompliance with the Court's past order, and imposing prospective monetary penalties for future noncompliance; and

3. Award any other relief the Court deems just and proper.

Respectfully submitted,
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By: */s/ Katherine Loewe*

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2025, I served the foregoing electronically through the Court's E-File system, which caused all parties through counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Katherine Loewe
KATHERINE LOEWE