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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

ASHOOR RASHO, et al.,	)	
	)	
Plaintiffs,	)	No. 1:07-CV-1298-MMM-JEH
	)	
v.	)	Judge Michael Mihm
	)	
ROB JEFFREYS, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR CONTEMPT FOR FAILURE TO COMPLY WITH THE COURT'S DECEMBER 20, 2018 INJUNCTION AS REISSUED AND MODIFIED ON APRIL 23, 2019

Injunctions are to be obeyed unless they are stayed. The Court denied Defendants' motion to stay the injunction, which was first issued October 30, 2018 without a remedy, December 20, 2018 with remedy and reissued as modified on April 23, 2019. Dkt. 2460, 2516, 2579, 2633. The Court of Appeals was never asked for a stay.

> We begin with the basic proposition that all orders and judgments of courts must be complied with promptly. If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal. Persons who make private determinations of the law and refuse to obey an order generally risk criminal contempt even if the order is ultimately ruled incorrect.

Maness v. Meyers, 419 U.S. 449, 458, 95 S. Ct. 584, 591 (1975). *of Bahá-ís of U.S., Inc*., 628 F.3d 837, 846 (7th Cir. 2010) As the Seventh Circuit explained in *McNaughton v. Harmelech*, 932 F3d 558, 565 (7th Cir. 2019), "regardless of whether MacNaughton agreed with the Holderman Order, he had to follow it unless and until it was undone through proper channels, such as reconsideration by the district judge or vacatur by us … . MacNaughton served as his

own attorney but not as his own judge." (citing *Maness v. Meyers*, 419 U.S. 449, 458, 95 S. Ct. 4. 584 (1975).)

Defendants have not obeyed this court's injunction despite being on notice of their failure to provide constitutional care since at least the time the court issued a preliminary injunction in May 2018. The preliminary injunction itself required defendants to provide a schedule of personnel necessary to provide constitutional care. The defendants provided such a schedule on July 2018, which called for a net increase of 93.35 FTE mental health staff (consisting of administrative staff, nurses, BHTs and QMHPS) to the then-existing staffing plan. Pursuant to the permanent injunction order, Defendants again assessed staffing and, in April 2019, issued a plan calling for an additional increase to reach a total of 515.85 FTE mental health staff. The Court's permanent injunction required staffing to meet the levels the IDOC committed to in 2014 as necessary to "deliver constitutional care," an aggregate of 449.5 FTE[1] As the IDOC admitted in its October 2019 Quarterly report Dkt. 2782; p. 1254, its total staffing is 373.338 FTE. This means the system is severely understaffed, short 75.162 FTE from the Court ordered levels and 142.5 FTE short of the IDOC's own staffing plan. More troubling, the report of a staffing expert hired this year to assess IDOC's staffing practices found that turnover will continue under the current system and IDOC will continue to lose upwards of a hundred staff in the coming year. Dkt. 2782, p. 3; Ex. A, p. 48.

[1] These are aggregate, across-discipline staffing numbers. It should be noted however, that following the 2014 Staffing Plan, in 2016, IDOC unilaterally reduced the number of psychiatric providers it contracted for (from 85.5 to 65.75). IDOC's more recent staffing plans have left that number at 65.75, while increasing other FTE mental health positions. While the more recent IDOC staffing plans call for aggregate increases above the 2014 staffing levels, some positions have been decreased.

The IDOC cannot deliver constitutional care when it remains 152,000 hours a year short of its 2014 commitment (2000 x 76). The high historical turnover rate means that IDOC staffing levels remain basically static.

With the present staff the IDOC itself admits that 15% of the mental health population is not receiving care in the individual prison reports attached to their Compliance report. The 85% level, however, is not compliance with the Court's order, or even substantial compliance under the Settlement Agreement.[2] Even the 85% compliance level is belied by the IDOC's own internal audits as the auditor acknowledged: "I cannot certify that the Department has met the threshold of 85% compliance in each of the areas audited at each of the facilities" and that the compliance ratings do not assess qualify of care. IDOC Quarterly Report - Order Attachment 4, Dkt. 2781 at159-160.

The IDOC's vendor trumpets to the world its ability to provide adequate staffing: "Thanks to our dedicated internal staffing department and our innovative recruitment programs, Wexford Health is the **industry leader in position fill rates** throughout the country. This allows us not only to maintain continuity and quality of patient care, but also to control labor costs by minimizing our use of expensive Agency personnel." Ex. B. Yet, the IDOC has been grossly understaffed for at least 8 years.

The Court's monitor Pablo Stewart has opined that the Department is not in compliance with the Court's injunction Order in his July 2019 Report on compliance with the injunction: "As noted in the body of this report, the Department still has a long way to go to be in substantial

[2] Under the Settlement Agreement, Sect. II (t), "[t]he Defendants will be in substantial compliance with the terms of this Settlement Agreement if they perform its essential, material components even in the absence of strict compliance with the exact terms of the Agreement. Substantial compliance shall refer to instances in which any violations are minor or occasional and are neither systemic nor serious. Substantial compliance can be found for obligations imposed under this Settlement Agreement either IDOC-wide or at specific facilities."

compliance with the Court's Orders. Staffing remains a critical roadblock to the Department's ability to be in substantial compliance." Dkt. 2715 at 27. Vital Care Health Strategies, a new expert hired by the IDOC as part of the Court of Appeals mediation process, has confirmed that the Department has inadequate staff in the five key facilities Vital examined: Pontiac, Logan, Dixon, Joliet and Pinckneyville.

> Logan is staffed at 56%: "A consistent message heard from employees at all levels is that they are significantly understaffed."
>
> Pontiac is at 48%: "With the current staffing levels, staff report they are barely covering the basics. Some staff report that they were fully staffed one year ago, but they lost 13 MH staff in about 6 months. It was reported that Pontiac lost 32 people in a 3-year period."
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> Dixon is at 64%:
>
> Joliet is at 77.5%:
>
> Pinckneyville is at 80.3%: Ex. A, pp. 10, 12, 18, 19, 24, 27, 33, 40.
>
> The IDOC acknowledges that the various backlogs persist. Dkt. 2781, p. 3, 5, 7-8.

Inmates on crisis care are neither treated nor promptly removed from crisis care. Inmates in segregation are not provided with required mental health care.

Accounts of Class Members and Plaintiffs' counsels' monitoring visits have also confirmed that little progress is being made in the actual delivery of the much needed care required by the Court's Order. Class Members are suffering from the impact of the staffing vacancies and frequent turnover of clinical staff. They receive far too little mental health treatment: virtually no one receives one-on-one therapy. Instead, groups – which are not helpful or appropriate for all patients – are the only method of therapy. Pinckneyville and Pontiac (which together have custody of more than 1500 Class Members) have recently reduced group therapy. What treatment is provided is often poor

in quality; many of the groups are non-substantive and psychiatry continues to be plagued with serious medication mismanagement. Plaintiffs have reported these observations to the IDOC.

Subjective good faith of the IDOC is not a defense to contempt. "Parties cannot be insulated from a finding of civil contempt based on their subjective good faith." *Taggart v. Lorensen*, 139 S.Ct. 1795 (2019). The Illinois Department of Corrections has no more right to ignore this Court's orders than Mr. MacNaughton had to ignore Judge Holderman's order.

The injunction has not been obeyed as to staffing, crisis care, segregation, medication management and treatment planning.

The parties' settlement agreement contemplates the failure to comply with an enforcement order.

> "If Plaintiffs contend that defendants have not complied with an order entered under the preceding paragraph, they may, after reasonable notice and a meeting with defendants, move for further relief from the Court to obtain compliance with the Court's prior orders." Amended Settlement XXIX (i).

Notice was given to Defendants of Plaintiffs' intention to move for civil contempt as to the IDOC's failure to comply with the Court's order as attested to by the Court's monitor in his July 17, 2019 report; confirmed by the more recent VitalCore report; and witnessed by Plaintiffs throughout this period. *See* Ex. C, Sept. 27, 2019, letter. The parties met on October 12 pursuant to that notice as required by the Settlement Agreement. The IDOC made no concrete proposals then, or since, to create a prompt path to achieve compliance with the Court's injunction.

The time has come to hold the IDOC in contempt for its failure to obey this Court's December 20, 2018 and April 23, 2019 injunction orders. We believe settled principles of

contempt law permit the court to find the Department in contempt. The rule of law requires that finding of contempt.

RESPECTFULLY SUBMITTED,

By: /s/ Harold C. Hirshman
One of the attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 15th of November 2019, a true and correct copy of the foregoing MOTION FOR CONTEMPT was served upon counsel of record *via* the Court's electronic case filing system.

/s/ Harold C. Hirshman
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