

IN THE
SUPREME COURT OF THE UNITED STATES

RYAN THORNELL, et al.,

Applicants,

v.

SHAWN JENSEN, et al.,

Respondents.

APPLICATION TO STAY THE ORDER ISSUED BY THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF ARIZONA

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September 16, 2026

PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Ryan Thornell, Director of the Arizona Department of Corrections, Rehabilitation, and Reentry; Richard Pratt, Interim Division Director, Division of Health Services, Arizona Department of Corrections (in his official capacity).

Respondents (plaintiffs-appellees below) are Shawn Jensen; Dustin Brislan; Robert Carrasco Games, Jr.; Jonathan Gonzalez; Jason Johnson; Kendall Johnson; Joshua Polson; Laura Redmond; Sonia Rodriguez; Ronald Slavin; Jeremy Smith; and Christina Verduzco, on behalf of themselves and all others similarly situated; and Disability Rights Arizona.

CORPORATE DISCLOSURE STATEMENT

Applicants state that no Applicant has a parent corporation and that no publicly held company owns 10% or more of any Applicant's stock.

RELATED PROCEEDINGS

- *Jensen, et al. v. Thornell, et al.*, Nos. 26-1746 and -5060 (9th Cir.) – Order denying motion to stay, filed Sept. 1, 2026;
- *Jensen et al. v. Thornell, et al.*, No. 2:12-cv-00601-ROS (D. Ariz.) – Order granting motion to appoint receiver, filed Feb. 19, 2026; Order appointing receiver, filed July 17, 2026; Order denying motion to stay, filed Aug. 5, 2026.

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TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

The district court below ordered a receivership that, effective October 19, 2026, will strip the Arizona Department of Corrections, Rehabilitation and Reentry (“Department”) of all authority over the State’s prison healthcare system and transfer that authority to a single private individual appointed by the court. That politically unaccountable individual will then assume sole responsibility for supervising state employees and contractors, directing hundreds of millions of dollars in public funds, and otherwise overseeing healthcare for more than 25,000 inmates in nine prison complexes across Arizona. The gravity of that action and the costly and disruptive consequences for the Department and the State are hard to overstate. Indeed, “[i]t is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.” *Preiser v. Rodriguez*, 411 U.S. 475, 491-92 (1973).

Although it is well-established that a receivership must be a remedy of last resort—especially in cases subject to the Prison Litigation Reform Act (“PLRA”)—the district court did not treat it as such. Rather, the court reached for one of the most powerful and federalism-defying tools in its arsenal as a first resort when the State did not promptly live up to the court’s expectations under a wide-ranging and demanding injunction. The district court imposed the receivership without first trying *any* intermediate measures to expedite compliance with the injunction (such as contempt-and-purge proceedings). The court did so despite the sustained progress the Department has achieved since the injunction was entered in April 2023. And,

tellingly, the court gave the private receiver more time to seek to achieve compliance with the sprawling injunction than it gave the responsible state officials themselves. What is more, the district court's decision relied primarily on events that occurred *before* the injunction was entered, instead of analyzing the Department's substantial progress since then.

As a result, the district court's order defied the rule that a receivership must be a remedy of last resort and the PLRA's requirement that prospective relief regarding prison conditions shall extend no further than necessary and be the least-intrusive means to correct the violation of the federal right in question. And, under this Court's recent decision in *Trump v. CASA*, 606 U.S. 831 (2025), serious questions exist about whether private receiverships over non-consenting state correctional institutions exceed federal court equitable authority altogether. In addition to lacking any sound foundation for an order of this magnitude, the district court's impatient order will irreparably injure the Department and Arizona's sovereign interests the moment it goes into effect. This Court should grant relief to allow Arizona's correctional healthcare system to remain in the hands of state officials answerable to the people of Arizona while this appeal proceeds.

* * *

The governing injunction was issued in April 2023 ("2023 Injunction"). Spanning over 60 pages, the 2023 Injunction requires the Department to comprehensively overhaul the healthcare services in its state-run prisons to remedy constitutional deficiencies that the district court previously found. The Department

has made significant improvements in the relatively short interval since the 2023 Injunction issued—which has coincided with the election of a new Governor and the appointment of new Department leadership, all of whom are committed to improving healthcare in the State’s prisons. Among other things, the Department has more than doubled its healthcare spending. It has grown its healthcare staff by over 50%. It has opened new healthcare facilities and improved existing ones. It has increased access to substance-use disorder treatment and specialty care. It has begun implementing a model of care that relies on primary-care providers and primary therapists. And it has improved critical systems, including its electronic healthcare record system, language-translation systems, and the system for monitoring compliance with the 2023 Injunction.

Despite that tangible progress, in February 2026, the district court took the concededly extraordinary and drastic step of ordering Arizona’s prison healthcare system into involuntary private receivership for at least five years (“Receivership Order”). In a separate July 2026 order, the district court then appointed a specific receiver with specified powers and duties (“Appointment Order”). The Department promptly appealed both orders, and the Ninth Circuit has since consolidated those appeals, expedited them, and scheduled oral argument in December 2026.

Nonetheless, the courts below were not content to leave control over prison healthcare—a core state function—in state hands where it belongs pending resolution of that highly expedited appeal. Instead, the majority of a Ninth Circuit motions panel—over the dissent of Judge Forrest—refused to grant a stay in an order issued

September 1, 2026. The upshot is that—on October 19, 2026, when briefing in the Ninth Circuit appeal is nearly complete—a federal-court-appointed receiver will take control of the provision of healthcare to roughly 25,000 inmates in nine state-run prison complexes across Arizona. This case cries out for a stay pending further appellate proceedings.

To start, the Department is likely to succeed on the merits of its appeal because the district court made multiple certworthy errors with its precipitous reach for the strong medicine of a receivership. Under the PLRA, prospective relief affecting prisons is impermissible unless that relief is the “least intrusive means necessary to correct the violation of the Federal right.” 18 U.S.C. §3626(a)(1)(A). That demanding statutory standard of restraint and parsimony is reinforced by the longstanding equitable principle that a receivership is an extraordinary remedy of last resort. The Receivership and Appointment Orders plainly are not the least-intrusive means here, nor were they issued as a last resort. The district court tried no other measures to expedite or refocus implementation of the 2023 Injunction. And the district court hastily imposed a receivership after an inadequate period for the State’s new leadership to achieve compliance—which is tellingly illustrated by the receiver having a minimum of five years to do what the court expected the Department to do in less than three.

Moreover, bedrock principles of federalism and equity support preserving the status quo and staying the transfer of critical state functions into private hands during the pendency of the appeals. Just last Term, the Court held that federal courts

may not grant equitable relief absent a “founding-era antecedent” for the relief. *CASA*, 606 U.S. at 846-47. Whether the requisite antecedent exists for a private receivership over a non-consenting state institution is far from clear—particularly a state correctional agency operating at the apex of state sovereign authority. At a minimum, the significant questions about the equitable authority to impose a receiver under the circumstances here underscore the importance of heeding the PLRA’s least-intrusive mandates and the equitable rule that a receivership is a remedy of last resort. The PLRA required the district court here to carefully consider the Department’s efforts and progress and then exhaust every less-intrusive remedy to spur compliance before imposing the most extreme remedy. Because the district court failed to do so, the Receivership and Appointment Orders cannot stand.

All the other stay factors also strongly point in the Department’s favor. The federalism interests at stake and the multiple conflicts with law and precedent make this case eminently certworthy. Moreover, the district court’s intrusion into a traditional sphere of state authority, without allowing the Department sufficient time to continue and complete its progress, is an irreparable injury to the State. The public has no interest in the preservation of unlawful court orders but has a strong interest in public functions being discharged by publicly accountable officials. And the plaintiffs who filed this suit will not suffer material harm if the receivership designed to run into the 2030s is delayed a few months while the highly expedited appeal on the merits proceeds. Indeed, the prospect of transferring control over the Department’s healthcare system from the Department to the receiver and back to the

Department all over again between now and the New Year if the state ultimately prevails is far more disruptive.

The Department thus respectfully requests a stay pending appeal to the Ninth Circuit and, if necessary, pending the filing and disposition of a petition for certiorari in this Court. Furthermore, because the court-ordered receivership is scheduled to start on October 19, 2026, the Department respectfully requests a decision on this application before then.

OPINIONS AND ORDERS BELOW

The district court's Receivership Order is reported at 825 F.Supp.3d 949 and attached at App.22-149. The district court's Appointment Order is unreported but available at 2026 WL 2078688 and attached at App.7-21. The district court's order denying a stay pending appeal is unreported but attached at App.3-6. The Ninth Circuit's order denying a stay pending appeal is unreported but attached at App.1-2.

JURISDICTION

This Court has authority to enter a stay under 28 U.S.C. §1651(a) and 28 U.S.C. §2101(f).

STATEMENT OF THE CASE

A. Pre-2023 Injunction History

As many prison-reform efforts do, this case began over a decade ago, in 2012, when a class of prisoners in Arizona's prisons filed suit alleging that the healthcare provided by the Department and other conditions of confinement violated the Eighth

Amendment. *See* Dkt.1.¹ The district court certified a primary class of all inmates subjected to the Department’s “medical, mental health, and dental care policies and practices,” as well as a subclass of inmates held in isolation. App.23-54. The Department appealed that class-certification order, but the Ninth Circuit affirmed it in 2014. *See Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014).

In 2014, following the Ninth Circuit’s class-certification decision, the parties agreed to a stipulated settlement (“2014 Stipulation”)—which the district court approved in 2015—that contained 103 negotiated “performance measures” regarding healthcare at Department-run prisons. *See* Dkt.1185; App.24. The parties expressly agreed in the 2014 Stipulation that it “shall not be construed or interpreted as an admission of any wrongdoing or liability by any party,” Dkt.1185 ¶5, and the district court took the same view, stating in its order approving the 2014 Stipulation that it could not “foresee what would have happened at trial” and emphasizing that “there was litigation risk on both sides,” Dkt.1458, Attachment 2 at 30:4-7. Furthermore, in an express acknowledgment that overhauling the Department’s healthcare system would not happen overnight, the parties agreed that they would not move to terminate the 2014 Stipulation for four years “[t]o allow time for the remedial measures ... to be fully implemented.” Dkt.1185 ¶37.

Unfortunately, the 2014 Stipulation prompted frequent disputes between the parties between 2015 and 2021. In resolving those disputes, the district court

¹ “Dkt.” refers to the district court’s docket. *See* No. 2-12-cv-601 (D. Ariz.).

consistently ruled against the Department’s then-leadership, issuing dozens of orders against them to direct compliance, twice holding them in contempt, and imposing approximately \$2.2 million in fines. *See* App.24; *Parsons v. Ryan*, 949 F.3d 443 (9th Cir. 2020). By 2021, the district court elected to revoke the 2014 Stipulation altogether and hold a bench trial.

That bench trial occurred in 2022, and the district court ultimately issued a nearly 200-page decision finding constitutional deficiencies in the Department’s healthcare system. *See* Dkt.4335. The district court framed the “core issue” as inadequate staffing, found the practice of using nurses as the first line of care “medically unacceptable,” and identified failures in mortality review, mental healthcare, translation services, and electronic health records. Dkt.4335 at 21, 41-44, 70-105.

B. The 2023 Injunction

The district court appointed experts to help devise a remedy and circulated a draft injunction to the parties in January 2023—the same month that a new Governor and Department Director assumed office. *See* Dkt.4339 at 3-4; Dkt.4352; Dkt.4362; Dkt.4380; Dkt.4818 at 3 & Ex.1. After negotiated modifications, the district court entered the 2023 Injunction with the parties’ agreement in April 2023. *See* Dkt.4402; Dkt.4410 at 3.

The 2023 Injunction materially differed from the 2014 Stipulation. As noted, the 2014 Stipulation emerged from a negotiated settlement in which neither side admitted liability, established various performance measures, and preserved the Department’s model of care. By contrast, the 2023 Injunction is an adjudicated decree

of “unusual scope” that reflects the district court’s belief that “the changes necessary to redress the fail[ure]s” must “be substantial” to remedy constitutional violations. Dkt.4410 at 4-5. Running to 67 pages, the 2023 Injunction imposes 154 substantive requirements on every state-run prison—and even addresses minutia like the manner in which Department staff must scan documents. *See* Dkt.4410 at 11-50; App.49; Dkt.4410 §§4.4.1-4.4.3.

Furthermore, in a departure from the approach taken in the 2014 Stipulation, the 2023 Injunction mandates a comprehensive change to the Department’s delivery of healthcare: an assigned primary-care provider for every inmate, *see* Dkt.4410 §§6.1-6.3, a primary therapist for everyone on the mental-health caseload, *see* Dkt.4410 §13.1, and—with narrow exceptions—initial care by licensed practitioners rather than nurses, *see* Dkt.4410 §§1.11, 7.4.7. In a moment of candor, the district court’s experts later described the resulting model of care as “a wholesale shift” requiring “extensive changes to many processes of care, clinical roles, and workflows,” Dkt.4761 at 1-2—a rollout whose “scale ... is massive” and whose complexity is “difficult to overstate,” Dkt.4761 at 11.

The 2023 Injunction also gave those court-appointed experts a prominent continuing role. For example, although the 2023 Injunction required the Department to fill every healthcare position under the existing vendor contract within three months, *see* Dkt.4410 §1.16, it deferred resolution of the central question of how many staff the *new* model of care would require to a “staffing analysis and plan” prepared by the experts, Dkt.4410 §1.17. That expert-led process lasted two years, ending only

in June 2025. *See* Dkt.4858; Dkt.4869; Dkt.4870; Dkt.4900; Dkt.4916 at 2. In addition, the court tapped its experts to serve as “monitors” to “evaluate” the Department’s “performance” under the 2023 Injunction. Dkt.4410 at 6.

C. Post-2023 Injunction History

Since the district court entered the 2023 Injunction in April 2023, the State’s and the Department’s new leadership have worked vigorously to comply with it. The progress is indisputable. By every objective systemwide measure in the record, the Department’s healthcare system today is larger, better funded, better staffed, and more capable than the system condemned by the district court following the 2022 bench trial.

Funding. With the support of the Governor and the Legislature, the Department more than doubled annual healthcare spending—from \$220.4 million in FY2022, to \$382.1 million in FY2024, to \$425.9 million in FY2025, to \$458.1 million under the FY2026 budget. *See* Dkt.4973 at 2, 12; Dkt.4818 at 3. The Department accomplished these funding achievements through the ordinary appropriations process, without a court order compelling a single dollar.

Staffing. The district court’s findings following the bench trial identified understaffing as the root of every other deficiency. *See* Dkt.4335 at 21. Since those findings, overall healthcare staffing has grown from 851.94 full-time equivalents² to 1,332.1 as of July 2025—a 56% increase—even as the inmate population declined

² Full-time equivalent employees equal the number of employees on full-time schedules plus the number of employees on part-time schedules converted to a full-time basis.

approximately 7%. *See* Dkt.4973 at 5-7. And the gains are greatest in the areas that the district court singled out as having the most serious deficiencies: Staff physicians have tripled per inmate (5.5 full-time equivalents to 15.3); midlevel providers—who serve as primary-care providers for non-complex patients under the 2023 Injunction—are up 93% per inmate; and mental-health staffing is up 40% per inmate. *See* Dkt.4973 at 6; Dkt.4410 at 24-25, §6.3. On top of all that, the Department has implemented the expert-led and court-approved staffing plan’s care model in 31 of 43 units (72%), and its goal is to achieve statewide implementation by the end of 2026. *See* Dkt.5052 at 3; Dkt.5315 at 8-9 & Ex.B.

Facilities. The Department increased special-needs-unit and inpatient-care bedspace by 66%, opened 160 new skilled-nursing beds and 172 inpatient mental-health beds, expanded residential mental-health capacity by 31%, and built or renovated clinical space at complexes across the state. *See* Dkt.4818 at 4-6; Dkt.4973 at 2, 8-9. The monitors found the Department compliant with the special-needs-unit requirements: The Department “has done a very good job,” with bed capacity that “exceeds their current need by about 45%, which reflects planning for future need.” Dkt.4968 at 98.

Programs. The Department built a statewide medication-assisted-treatment program that now serves approximately 7,000 inmates with opioid use disorder, and it spent more than \$60 million treating approximately 4,500 patients for Hepatitis C—programs that even the monitors’ first report called “sea-change improvements.” Dkt.4818 at 6-7; Dkt.4539 at 30. It also substantially increased offsite specialty-care

appointments and launched suicide-prevention, dementia-companionship, and self-injury-reduction programs. *See* Dkt.4818 at 4-7.

Custody. The Department has also integrated more than 1,000 maximum-custody inmates into general population, reducing the maximum-custody population by 78%. *See* Dkt.4818 at 7-8. Even Plaintiffs have declined to seek relief as to the isolation subclass in light of the “demonstrable and meaningful improvements.” Dkt.4795 at 2 n.1.

D. The 2026 Receivership and Appointment Orders

Despite this impressive progress and the Department’s evident commitment to compliance with the 2023 Injunction, the district court declared that its “patience ha[d] run out” with the Department in June 2024—just one year after it imposed the extraordinary injunction and one year before the court even approved the expert-prepared staffing plan that serves as the cornerstone of the injunction. Dkt.4637 at 8. Seizing on that statement and similar ones, Plaintiffs moved for the imposition of a receiver in February 2025, just 22 months after the 2023 Injunction issued and four months *before* the approval of the staffing plan. *See* Dkt.4795.

In response to the receivership motion, the district court directed its monitors to prepare “a comprehensive Report addressing material issues concerning the Motion for a Receiver.” Dkt.4868 at 1. The experts found the Department not compliant with 131 of the 2023 Injunction’s 154 healthcare Quality Indicators and emphasized eight deaths that occurred within the State’s prison system between 2023 and 2025. *See* Dkt.4968 at 4-15, 44-306. The Department responded with more than 200 pages of declarations and exhibits, including a physician’s declaration disputing

the monitors' clinical conclusions in specific mortality reviews and a methodological critique of the compliance rubric, which deemed the Department noncompliant on a given indicator *even if* the Department in fact achieved 99.5% compliance. *See* Dkt.4973 & Exs.1-15.

Regardless, in February 2026, the district court granted the receivership motion. *See* App.22-104. The court placed “[g]reat weight” on the “opinions of the Monitors”; characterized the Department’s objections to those opinions as proof that the Department is “amnesic, or duplicitous, or both,” and “border[ing] on bad faith”; found an immediate threat of harm to Plaintiffs principally from the number of Quality Indicators supposedly violated, the eight mortality reviews, and individual patient narratives drawn from the monitors’ reports; found less extreme measures exhausted based on the contempt sanctions and enforcement orders issued *before* the 2023 Injunction and *before* the current Governor and Department Director took their positions; addressed the Department’s doubled healthcare funding under the heading “Waste of Resources”; and lauded a similar receivership order in California as a model of “marked success” even though it has lasted 20 years. *See* App.44-98, 100. The order’s PLRA analysis is one-paragraph long and states in a conclusory fashion that the receivership is “narrowly drawn,” extends “no further than necessary,” and is “the least intrusive means necessary to correct and prevent violations.” App.102-03.

Several months later, in July 2026, the district court issued an order appointing Annette Chambers-Smith, the former director of Ohio’s corrections

department, as receiver.³ See App.7-8 (“Appointment Order”). Under the Appointment Order, the receiver will serve for a minimum five-year term that “shall be extended as necessary.” App.18.

The Appointment Order is sweeping in numerous respects. It transfers to the private receiver “[a]ll duties and authorities vested by law in the Director of [the Department] relating to the health care of the class members” and correspondingly enjoins the Director’s own exercise of those duties. App.11. The receiver has the authority to “hire, fire, suspend, supervise, promote, transfer, discipline, and establish compensation for all [Department] employees and contract staff who perform services related to the health care of class members” and may create, abolish, or transfer positions. App.11-12. The receiver is “responsible for formulating and establishing the [Department’s] annual ... health care budget,” holds “all authority vested by law in the Director of [the Department] relating to the financing of the prison health care system,” and may negotiate, terminate, or renegotiate the Department’s healthcare contracts. App.13-14. The receiver is paid a \$500,000 annual salary, may hire staff and consultants, and is the sole signatory and fiduciary of a “Receiver’s Office Fund Account” that the Department is required to replenish. App.14-16. And “[a]ll costs incurred during the Receivership shall be borne by” the Department—with no cap. App.17.

Two provisions of the Appointment Order address Arizona law directly. First,

³ The parties agreed on this individual, but the Department has always preserved its objection to a receivership in the first place.

if the receiver “determines compliance with state laws, regulations, or contracts will interfere with, or preclude” her objectives, she “shall request the Court waive compliance with those laws, regulations, and contracts.” App.17-18. The Appointment Order specifically identifies two Arizona statutes—the law requiring privatized correctional healthcare and the law capping specialist compensation—as “persistent barriers to provision of constitutional health care.” App.17 n.4. Second, whenever the receiver determines that the fiscal year’s appropriated funds “are inadequate to accomplish the Receiver’s authorities and duties,” she must consult the Director and notify the Legislature and Governor. App.20. But if adequate funding does not result from that consultation process, the receiver or either party “may request resolution by the Court, which may prompt the Court to order the waiver of Arizona State laws, regulations, and contracts that interfere with the requirements and desired outcome of the Receivership.” App.20.

E. Stay Proceedings

The Department promptly appealed both the Receivership and Appointment Orders to the Ninth Circuit. *See* Nos. 26-1746, 26-5060 (9th Cir.). The Ninth Circuit consolidated the appeals and expedited them such that the court will hear oral argument in December 2026. *See* App.2. The Department also moved for a stay pending appeal. But the district court denied that motion on August 5, 2026, *see* App.6, and the Ninth Circuit did the same on September 1, 2026, over the dissent of Judge Forrest, *see* App.1. Judge Forrest would have “grant[ed] an administrative stay and refer[red] the stay motion to the panel assigned to decide the merits of the[] appeals on an expedited basis.” App.2. Although the district court originally

determined that the receivership should begin “21 days following the resolution of any Motion to Stay,” App.20—*i.e.*, on September 22—it issued an order on September 10 declaring that the receivership would instead begin on October 19, *see* Dkt.5663, four days after Plaintiffs are scheduled to file their response brief in the expedited Ninth Circuit appeal.

REASONS FOR GRANTING THE APPLICATION

To obtain a stay pending appellate proceedings, an applicant must show a likelihood of success on the merits, a reasonable probability that the Court will grant certiorari, and a likelihood of irreparable harm. *See Trump v. Cook*, 146 S.Ct. 2234, 2246 (2026); *see also, e.g., Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers). In “close cases,” the Court “will balance the equities and weigh the relative harms.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *Nken v. Holder*, 556 U.S. 418, 434 (2009).

Here, all factors favor staying the Receivership and Appointment Orders.

I. The Department Is Likely To Succeed On The Merits.

The likelihood of success on the merits is one of the “most critical” factors in the stay analysis. *Trump v. California*, 2026 WL 2473573, at *2 (U.S. Aug. 24, 2026) (per curiam). The Department is exceedingly likely to succeed on the merits here, as the challenged Orders violate the PLRA and the equitable rule that a receivership is a last-resort remedy, undermine principles of federalism, and raise significant questions about whether federal courts have equitable authority to impose a receivership over a non-consenting state correctional institution.

A. As a Matter of Law, the District Court’s Imposition of a Receivership Is Not the Least-Intrusive or Last-Resort Remedy Here, Violating Principles of Equity and the PLRA.

“Receivership is generally regarded as a remedy of last resort, to be used only where other remedies would be inadequate.” 75 C.J.S. *Receivers* §9 (Apr. 2026 update); see 12 Charles A. Wright & Arthur R. Miller, *Fed. Prac. & Proc. Civ.* §2983 (3d ed. Apr. 2026 update) (“The appointment of a receiver is considered to be an extraordinary remedy that should be employed with the utmost caution and granted only in cases of clear necessity[.]”). That is true in cases involving mine-run private disputes as well as in cases involving other state and local agencies. See 16 Fletcher *Cyc. Corp.* §7697 (2026) (in the corporate-law context, “it has been said that ‘receiverships are notoriously expensive and rightly considered a last resort’”); *District of Columbia v. Jerry M.*, 738 A.2d 1206, 1213 (D.C. 1999) (per curiam) (a receivership is a “remedy of last resort” imposed “only when absolutely necessary”). And it is true *a fortiori* in the context of state-run prisons because the PLRA requires the district court to select “the least intrusive means necessary to correct” the constitutional violation and to ensure that the remedy ordered “extend[s] no further than necessary.” 18 U.S.C. §3626(a)(1)(A). Indeed, receivership is considered “‘the nuclear option’ in prison reform litigation.” Liat Weingart, *Receiverships in the Prison Litigation Context: Factors Necessary for an Effective Judicial Remedy of Last Resort*, 9 Cardozo Pub. L. Pol’y & Ethics J. 193, 196 (2010).

Ignoring the severity of the remedy at issue, the district court here exercised none of the restraint that equity and the PLRA require and committed three core legal errors in the process.

1. First, for a receivership to be a remedy of last resort and the least intrusive means, the district court must exhaust less-intrusive options first. But here, the district court precipitously ordered a receivership without first exhausting—or even trying—any less-intrusive options to spur compliance.

To begin, the district court never found the Department in contempt for specific instances of noncompliance with the 2023 Injunction while allowing an opportunity to purge. “The judicial contempt power is a potent weapon.” *Int’l Longshoremen’s Ass’n v. Phila. Marine Trade Ass’n*, 389 U.S. 64, 76 (1967). Here, a contempt order would have forced the district court to identify specific deficiencies and given the Department a clear opportunity to remedy identified shortcomings. A receivership is not a remedy of last resort if the court leaps over the less-intrusive contempt-and-purge process. Other courts have recognized as much. *See, e.g., United States v. Hinds Cnty. Bd. of Supervisors*, 128 F.4th 616, 622 (5th Cir. 2025) (affirming receivership where district court had twice held defendant in contempt); *Coleman v. Newsom*, 2024 WL 3385911, at *5 (E.D. Cal. July 12, 2024) (receivership after multiple contempt orders and money fines did not spur the defendants toward compliance); *Nunez v. N.Y.C. Dep’t of Corr.*, 782 F.Supp.3d 146, 161 (S.D.N.Y. 2025) (receivership after contempt orders proved insufficient); *Shaw v. Allen*, 771 F.Supp. 760, 763 (S.D. W. Va. 1990) (three prior contempt proceedings “to no avail”); *Emma C. v. Eastin*, 2001 WL 1180636, at *17-19 (N.D. Cal. Oct. 4, 2001) (denying motion for receivership to provide defendants with “one last opportunity to purge its contempt”).

The district court did not deny that the contempt-and-purge process is less intrusive but concluded that it had no need to utilize that process here because it had already imposed civil contempt fines *before* imposing the 2023 Injunction. *See* App.75-79. That is reversible error. Plaintiffs sought the appointment of a receiver to “remedy otherwise uncorrectable violations of the Constitution.” Dkt.4795 at 12. Of course, the district court found the Department in violation of the Constitution only after the bench trial in 2022, and the 2023 Injunction is the device that orders corrective action. Before those events, the district court expressly acknowledged that “both sides” had “litigation risk,” Dkt.1458 at 37, and it approved nothing more than the 2014 Stipulation, which everyone agreed should “not be construed or interpreted as an admission of any wrongdoing or liability by any party.” Dkt.1185 ¶5. Any contempt proceedings that occurred during the era of the 2014 Stipulation thus are no substitute for contempt proceedings for violations of the 2023 Injunction. And that is especially obvious given that the State and the Department had new leadership during the latter period.

Nor did the district court take any other intermediate steps to probe the Department’s compliance efforts. For instance, in its July 2026 Appointment Order, the district court directed the receiver to prepare an “operational plan” within 180 days of the appointment that would “include a proposed schedule for completion and resolution of all identified solutions and remedies with measurements and gauges by which to periodically evaluate [the Department’s] progress and success.” App.9. In other words, the district court recognized that it could take up to six months alone for

the receiver simply to develop a plan to implement the 2023 Injunction, and the court recognized that the receiver would need to prioritize and phase implementation over the course of five years, at a minimum. *See* App.18. But the district court never gave the State’s own politically accountable officials any similar opportunity. The court never gave the Department a specific opportunity to explain how it has been prioritizing and operationalizing the Injunction’s myriad requirements, nor an opportunity to respond and react to the court directing a different approach.

In fact, at times in its Appointment Order, the district court seemed to shift the burden to the Department to prove why other measures should be tried first and rebut an apparent presumption in favor of a receiver. *E.g.*, App.97 (“Defendants have not demonstrated that a receivership would be a waste of resources, but there is certainly evidence that resources will continue to be wasted in the absence of a receiver.”). The district court’s reasoning turns equity and the PLRA’s requirements upside down. Under the proper legal standard, there is no basis to conclude that a receivership is “the *only* viable option to effectuate compliance with the laws and orders of the court,” *Jerry M.*, 738 A.2d at 1213 (emphasis added), because the district court did not try *anything else* before imposing a receivership. That failure runs afoul of the equitable rule that a receivership must be a remedy of last resort and the PLRA’s least-intrusive-means requirement and conclusively establishes that the receivership was legal error.

2. Second, a district court does not faithfully treat a receivership as a remedy of last resort or the least-intrusive means if it imposes a receivership while

the defendant state agency is making progress. But the district court here ignored that requirement and the Department's significant progress since April 2023. The district court did so because it focused on the wrong, pre-injunction time period.

When the district court ruled on the receivership motion, the evidence showed that:

- Overall healthcare staffing has increased 56% since the district court issued its 2022 findings—851.94 full-time equivalents to 1,332.1—while the inmate population fell 7%. *See* Dkt.4973 at 5-7;
- Staff physicians per inmate tripled (5.5 to 15.3 full-time equivalents), midlevel providers increased 93% per inmate (47.15 to 84.5 full-time equivalents)—already exceeding the expert-generated and court-approved staffing plan's requirement—and mental-health staffing increased by 40% per inmate. *See* Dkt.4973 at 6; *see* Dkt.4858 at 74;
- Healthcare spending more than doubled, from \$220.4 million (FY2022) to \$425.9 million (FY2025), with \$458.1 million budgeted for FY2026—with all of it secured through the State's ordinary appropriations process. *See* Dkt.4973 at 2, 12;
- Special-needs and inpatient bedspace increased by 66%; the Department increased skilled-nursing beds to 160 and inpatient mental-health beds to 172; residential mental-health capacity increased 31%; and the Department produced new or renovated clinical space across the system. *See* Dkt.4818 at 4-6; Dkt.4973 at 2, 8-9;
- Approximately 7,000 patients began receiving medication-assisted treatment for opioid use disorder, and more than 4,500 patients received treatment for Hepatitis C at a cost exceeding \$60 million. *See* Dkt.4818 at 6-7; and
- The Department began operating the new model of care at 13 units spanning every complex within five months of the approval of the staffing plan, and as of July 26, that model of care is operational at 31 of 43 units (72%). *See* Dkt.5052 at 3; Dkt.5315 at 8-9 & Ex.B.

Remarkably, however, the Receivership Order did not consider this undisputed information on improvements in staffing, funding, facilities, or program data when it

displaced the State’s control over its own prison health care system after just 34 months. That approach is impossible to square with the PLRA or the rule that a receivership is a remedy of last resort. For instance, just a few months ago, the en banc Fifth Circuit vacated a PLRA remedial order precisely because the district court “fail[ed] to incorporate significant medical care improvements” that “related directly to deficiencies that the court found in its Liability Opinion.” *Parker v. Hooper*, 171 F.4th 736, 757-58 (5th Cir. 2026) (en banc); *cf. Jerry M.*, 738 A.2d at 1213-14 (reversing a receivership where “several important criteria were omitted from the trial court’s consideration,” including the capability and early record of new leadership).

As noted, the district court relied on the irrelevant pre-2023 Injunction period to shrug off other intermediate remedies. Similarly, throughout its Receivership Order, the district court focused primarily on events that occurred between 2014 and 2022—before the 2023 Injunction was even entered, before the 2022 finding of unconstitutionality, and before the Department’s current leadership assumed responsibility. *See* App.75-77. That skewed focus was legal error and reflects the district court’s refusal to consider the relevant time period: the Department’s conduct since the 2023 Injunction was entered.

To be sure, implementation has not been perfect. But the Department has made meaningful progress since the 2023 Injunction was entered. This is simply not a case in which a remedial order—here, the 2023 Injunction—failed to produce any changes whatsoever. *See Nunez*, 782 F.Supp.3d at 161 (finding violence, “self-harm,

and deaths in custody [were] demonstrably worse than when the Consent Judgment went into effect” ten years prior); *United States v. Hinds Cnty.*, 2023 WL 1186925, at *5, *7 (S.D. Miss. Jan. 30, 2023) (approving receivership over “an institution where terror reigns” and staffing was “getting worse”).

Receiverships, if ever appropriate as an equitable matter, are for situations where an institutional defendant has proven beyond question that it is unwilling and unable to comply. That scenario is worlds away from the Department’s committed leadership, earnest efforts, and sustained progress here.

3. A third logical consequence of the requirement that a receivership is a last resort and must be the least-intrusive means is that a district court may not impose a receivership without giving the defendant agency adequate time to comply with the underlying injunction. But once again, the district court utterly failed to meet this requirement, or even seriously consider it. Indeed, by the district court’s own telling, its patience had “run out” by June 2024, App.36—barely a year after the 2023 Injunction was entered. That impatience and the court’s subsequent haste to impose a receivership are incongruous with the scale and granularity of the Department’s implementation task. *See, e.g., Wayne Cnty. Jail Inmates v. Wayne Cnty. Chief Exec. Officer*, 444 N.W.2d 549, 551-54 (Mich. Ct. App. 1989) (ordering receivership after 18 years of noncompliance).

As but a small sample of that task, the 2023 Injunction demands a ground-up restructuring of healthcare delivery for approximately 25,000 patients across nine state-run complexes, necessitating the participation of thousands of clinical and

custody staff, and it requires new models of care, new staffing levels, new facilities, and new information systems—and compliance with 154 discrete requirements that are audited monthly. The district court’s own experts described just one byproduct of the 2023 Injunction’s requirements—statewide implementation of the expert-developed staffing plan—as “massive” and found it “difficult to overstate the complexity of this roll-out and the resources that will be required to plan and execute it.” Dkt.4761 at 11. In fact, even the district court itself recognized the Herculean scale of the task, stating at oral argument on the receivership motion that “everybody who is involved here knows that you can’t have a quick fix in a prison setting” and that “this is going to take a lot of time and a lot of resources.” Dkt.4995 at 44.

Nevertheless, after giving the Department not even three years to comply with the 2023 Injunction (and just eight months to implement the staffing plan that served as the cornerstone), the district court pulled the plug on the Department—and then turned around and gave the receiver “*five years*” (at least) to accomplish the very same objectives. App.18 (emphasis added). That approach flies in the face of equity and the PLRA. If five years is the minimum amount of time necessary for a receiver to achieve full compliance with the 2023 Injunction, then imposing a receivership after giving the Department less than three years is clearly not a remedy of last resort or the “least intrusive” option. 18 U.S.C. §3626(a)(1)(A). The district court has no equitable or statutory authority to suddenly pivot to a receivership as its preferred policy approach.

In sum, “a district court’s choice of equitable remedies ... ‘should begin with what is absolutely necessary,’” and “more stringent” measures “should be considered” only when the original ones “prove ineffective.” *LaShawn A. ex rel. Moore v. Barry*, 144 F.3d 847, 854 (D.C. Cir. 1998) (Silberman, J.). The district court inverted that approach here, dropping the proverbial nuclear bomb without exhausting less devastating firepower. Worse still, the district court did so by focusing on the wrong time period altogether and by holding the Department to a faster timeline than it would later deem a reasonable minimum for the receiver.

These plain legal errors cannot sustain remedial orders of this magnitude and the costly transfer of state authority they entail, especially in the prison context, where the State is at the apex of its sovereign police power. For these reasons, the Department is likely to succeed on the merits of its appeal. A private receiver should not be allowed to assume control of Arizona’s entire correctional healthcare system before the Ninth Circuit resolves that appeal, and this Court should grant a stay in the interim. *See, e.g., Coleman v. Newsom*, 131 F.4th 948, 955 (9th Cir. 2025) (staying a remedial order imposing substantial contempt fines); *Parker v. Hooper*, 95 F.4th 231, 231 (5th Cir. 2024) (mem.) (staying an injunction entered against a state prison); *United States v. Hinds Cnty. Bd. of Supers.*, No. 22-60203 (5th Cir. Dec. 28, 2022), ECF No. 102-1 (staying a correctional receivership pending appeal).

B. This Court’s Decision in CASA Raises Serious Questions As to Whether Federal Courts Have Equitable Authority to Direct State Institutions Into Private Receivership Over the State’s Objection.

Invoking the PLRA’s “least intrusive means” language, 18 U.S.C.

§3626(a)(1)(A), the district court concluded below that the least-intrusive means of correcting Eighth Amendment violations in Arizona’s prison system is to strip the Director of the Department—whom the Governor appointed and the Senate confirmed, *see* A.R.S. §41-1603(A); A.R.S. §38-211(A)—of his authority to oversee healthcare services in the prison system, appoint a private individual as a receiver, and bestow sweeping executive- and legislative-like powers on her. Thus, for instance, the receiver exercises “[a]ll duties and authorities vested by law” in the Department Director “relating to the health care of the class members,” including all authority over the Department’s healthcare budget and all authority over the Department’s employees and contractors. App.11-12. And the receiver is accountable to no one other than a federal judge and has the ability to seek the effective repeal of duly enacted Arizona laws that stand in her way. *See* App.17-20.

The district court’s determination that a private receiver is the least-intrusive means of correcting the identified constitutional deficiencies in the Department’s provision of healthcare suffers from all manner of problems, as explained above. But *CASA* further underscores the significance of those legal errors under principles of equity and the PLRA.

Congress gave jurisdiction to federal courts over “all suits ... in equity” in the Judiciary Act of 1789, §11, 1 Stat. 73, 78, and “still today,” the Judiciary Act “is what authorizes the federal courts to issue equitable remedies,” *CASA*, 606 U.S. at 841. Congress enacted the PLRA to constrain, not expand, the equitable powers of federal courts in the specific context of injunctions against state prison officials. *See* 18

U.S.C. §3626(a)(1)(A) (imposing strict limits on prospective relief in prison conditions cases), (a)(1)(C) (“Nothing in this section shall be construed to ... repeal or detract from otherwise applicable limitations on the remedial powers of the courts.”). As this Court cautioned just last Term in *CASA* (and just months after Plaintiffs filed their receivership motion), a federal court’s equitable authority is “flexible,” but “not freewheeling.” 606 U.S. at 841. Instead, although an “exact historical match” is not necessary, federal courts have the power to grant “only those sorts of equitable remedies ‘traditionally accorded by courts of equity’ at our country’s inception.” *Id.* at 841, 847 (quoting *Grupo Mexicano de Desarrollo, S.A. v. All. Bond Fund*, 527 U.S. 308, 319 (1999)).

Accordingly, the relevant inquiry here is whether a federal-court order directing a state institution into receivership over the State’s objection is “sufficiently ‘analogous’ to the relief issued ‘by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act.’” *Id.* at 841-42 (quoting *Grupo Mexicano*, 527 U.S. at 318-19). That issue presents serious and difficult questions. True, “[j]udicial reliance on receivers dates back at least to sixteenth century England.” *Digit. Media Sols., LLC v. S. Univ. of Ohio, LLC*, 59 F.4th 772, 778 (6th Cir. 2023). But early federal courts imposed receiverships only on *private* parties, and only then to preserve discrete, identifiable property (e.g., corporations, partnerships, railroads in reorganization, decedents’ estates, etc.) pending adjudication of competing claims to that property. *See, e.g., Gordon v. Washington*, 295 U.S. 30, 36-39 (1935) (discussing different instances of

receiverships). Appointing a receiver to preserve the integrity of certain property is different in kind from a wholesale judicial transfer of state authority from a politically accountable official to a private individual over a State's objection. Perhaps Congress could pass a statute granting such authority, but it has not done so. Indeed, the PLRA authorizes special masters, subject to limitations, but makes no mention of receivers. *See* 18 U.S.C. §3626(f). Thus, it is hardly clear that the specific type of order at issue here—*i.e.*, an order from a federal court imposing a private receiver over a non-consenting state prison healthcare system—has a sufficient “founding-era antecedent,” *CASA*, 606 U.S. at 847, particularly when, “traditionally, federal courts have adopted a broad hands-off attitude toward problems of prison administration,” *Procunier v. Martinez*, 416 U.S. 396, 404-05 (1974).

To be clear, the Department does not dispute the district court's authority to impose the 2023 Injunction here, nor federal courts' authority to issue structural injunctions more generally. But a receivership over a non-consenting state institution is different in kind from even lengthy and detailed injunctions, which still preserve state authority in politically accountable individuals to achieve compliance. In all events, for purposes of this application, the Court need not resolve whether such receiverships are a permissible exercise of federal court equitable authority because the Department is likely to succeed on the merits as a result of the district court's other legal errors.

But *CASA* reinforces what the PLRA and other precedent already make clear: a district court may order a receivership over a state prison system only as a true

remedy of last resort, where it is a “necessary” and the “least intrusive means” of “correct[ing]” an identified constitutional violation. 18 U.S.C. §3626(a)(1)(A). The district court’s precipitous order here failed that requirement several times over, and therefore the Department is likely to prevail on the merits. The Receivership and Appointment Orders should be stayed.

II. The Remaining Factors All Support A Stay.

Beyond assessing the likelihood of success on the merits when resolving a stay application, this Court also considers whether the underlying issues warrant certiorari; whether the applicants likely face irreparable harm in the absence of a stay; and the balance of equities. *See Hollingsworth*, 558 U.S. at 190. Those factors point in the direction of a stay too.

1. The issues in this case plainly warrant this Court’s review. The weighty federalism interests at stake make this case certworthy on their own. Additionally, particularly given the stakes of such orders, the standard under which a federal court may appoint a receiver over a state’s prison system is an important question of federal law that should be settled by this Court. But the other stay factors also powerfully reinforce the need for a stay.

2. The irreparable-injury factor is readily satisfied several times over. The district court’s failure to heed the PLRA and the rule that a receivership is a remedy of last resort has produced Orders that “interfere[] with the internal operations” of a sovereign State. *California*, 2026 WL 2473573, at *4. And not just any operations: The Orders interfere with the State’s ability to administer its own prisons, an area where states have some of the “stronge[est] interest[s]” and most complex laws and

regulations. *Preiser*, 411 U.S. at 491-92; *see also CASA*, 606 U.S. at 861 (reiterating that “any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury”).

Even if the Department prevails on appeal, that victory will “come too late” to fully repair the damage to the State’s federalism interests if the receivership goes into effect in the meantime. *California*, 2026 WL 2473573, at *4. Nor can that victory undo the interim chaos of transferring power and operational control to the receiver, only to transfer it back to the Department after the appeal resolves. Whether a receivership would meaningfully accelerate compliance is speculation, but it will undoubtedly add costs and supplant the lawful authority of state officers.

That irreparable injury is even more severe here because the costs of the receivership are not recoverable either. As the Receivership Order states, “[a]ll” monetary “costs incurred during the Receivership shall be borne by” the Department. App.16. Hence, even if the Department prevails on appeal, it cannot realistically claw back any funds that it must direct toward the receivership—and a “loss of money” qualifies as “irreparable harm” if it “cannot be recouped” and is “irrevocably expended.” *NIH v. Am. Pub. Health Ass’n*, 145 S.Ct. 2658, 2659 (2025).

3. Although this is not a “close case[],” *Hollingsworth*, 558 U.S. at 190, the balance of equities favors a stay all the same.

The public has no interest in the exercise of unlawful authority that wrests state functions away from accountable public officials and transfers them to an unaccountable private one. And Plaintiffs have little (if anything) to show on the

other side of the ledger. The Ninth Circuit has expedited the appeal here and set oral argument for December 2026. Plaintiffs thus face the prospect of only a months-long delay to a receivership that is slated to last at least until late 2031. Even *that* purported harm rests on unsupported conjecture that a receiver will make progress toward compliance with the 2023 Injunction faster than the Department. And no one would benefit from allowing a receiver to seize control of the State's prison health care system for a few months, only to have that authority returned to the Department after a reversal on the merits a short time later.

CONCLUSION

For the foregoing reasons, the Court should grant a stay pending further appellate proceedings and issue a decision on this application by October 19, 2026.

Respectfully submitted,

September 16, 2026

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 1 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SHAWN JENSEN; et al.,

Plaintiffs - Appellees,

v.

RYAN THORNELL, Director of the
Arizona Department of Corrections,
Rehabilitation and RICHARD PRATT,

Defendants - Appellants.

No. 26-1746

D.C. No.

2:12-cv-00601-ROS

District of Arizona,

Phoenix

ORDER

SHAWN JENSEN; et al.,

Plaintiffs - Appellees,

v.

RYAN THORNELL, Director of the
Arizona Department of Corrections,
Rehabilitation and RICHARD PRATT,

Defendants - Appellants.

No. 26-5060

D.C. No.

2:12-cv-00601-ROS

District of Arizona,

Phoenix

Before: S.R. THOMAS, BERZON, and FORREST, Circuit Judges
Partial Dissent by Judge FORREST.

The motion (Docket Entry No. 21 in 26-1746; Docket Entry No. 10 in 26-5060) for leave to file an amicus brief in support of the motion to stay is granted.

The motion (Docket Entry No. 7 in 26-5060) to stay the district court's July 17, 2026 order is denied. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (defining

standard for stay pending appeal). This denial is subject to reconsideration by the panel assigned to decide the merits of these appeals.

These appeals are expedited. The consolidated opening brief is due September 15, 2026. The consolidated answering briefs are due October 15, 2026. The optional consolidated reply brief is due 21 days after the consolidated answering briefs are filed. No streamlined extensions of time to file a brief will be approved. *See* 9th Cir. R. 31-2.2(a)(1). No written motions for extensions of time under Ninth Circuit Rule 31-2.2(b) will be granted absent extraordinary and compelling circumstances.

The clerk will place these cases on the calendar for December 2026. *See* 9th Cir. Gen Ord. 3.3(f).

Judge Forrest would grant an administrative stay and refer the stay motion to the panel assigned to decide the merits of these appeals on an expedited basis.

1 **WO**

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Shawn Jensen, et al.,

10 Plaintiffs,

11 v.

12 Ryan Thornell, et al.,

13 Defendants.
14

No. CV-12-00601-PHX-ROS

ORDER

15 Pending before the Court is Defendants' Motion for Stay of Order Appointing a
16 Receiver Pending Appeal (Doc. 5315).

17 In a February 19, 2026 Order, the Court granted Plaintiffs' Motion for Appointment
18 of a Receiver after extensive briefing by the Parties and input from the Court's experts.
19 (Doc. 5123.) In a July 17, 2026 Order, the Court accepted the Parties' Stipulation for the
20 Appointment of Ms. Annette Chambers-Smith and outlined the authority, duties, and
21 responsibilities of the Receiver. (Doc. 5307.) The Court permitted a short stay of the Order
22 so that Defendants could seek a stay pending appeal. Defendants now seek a stay of the
23 Court's Order appointing a Receiver pending appeal.

24 **I. Legal Standard**

25 "A stay is not a matter of right, even if irreparable injury might otherwise result."
26 *Nken v. Holder*, 556 U.S. 418, 433 (2009) (citation omitted). "It is instead an exercise of
27 judicial discretion, and the propriety of its issue is dependent upon the circumstances of
28 the particular case." *Id.* (internal quotation omitted). "The party requesting a stay bears

1 the burden of showing that the circumstances justify an exercise of that discretion.” *Id.*
 2 (citations omitted). In exercising its discretion, the Court must consider “four factors: (1)
 3 whether the stay applicant has made a strong showing that he is likely to succeed on the
 4 merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether
 5 issuance of the stay will substantially injure the other parties interested in the proceeding;
 6 and (4) where the public interest lies.” *Id.* at 434 (citation omitted). These factors overlap
 7 with the factors governing preliminary injunctions “because similar concerns arise
 8 whenever a court order may allow or disallow anticipated action before the legality of that
 9 action has been conclusively determined.” *Id.*

10 In the Ninth Circuit, “[a] party must ordinarily move first in the district court for”
 11 “a stay of the judgment or order of the district court pending appeal.” *See* Ninth Circuit
 12 Rule 8.

13 **II. Discussion**

14 Defendants assert that they are likely to succeed on the merits because a
 15 Receivership is an extreme remedy and the focus of the Receivership Order was incorrect.
 16 In short, Defendants’ argument is that the Court’s careful findings should be reconsidered
 17 and the Court should rethink Defendants’ previous arguments that a Receivership was not
 18 an appropriate remedy. For example, Defendants assert that the Court has not considered
 19 its performance under the injunction, but this assertion is simply untrue. The Court
 20 “exercised caution and critical reflection,” including relying on the well-supported findings
 21 and opinions of the monitors, and found Defendants’ performance under the Permanent
 22 Injunction insufficient and unconstitutional. Likewise, Defendants rely on their own
 23 methodologies for calculating their percentage of compliance with the Injunction, which
 24 the Court previously identified as significantly flawed. Furthermore, Defendants’ claim
 25 that “the Court did not attempt any intermediate remedies” since entry of the Permanent
 26 Injunction in 2023 is both inaccurate and unavailing. In the Order granting the Motion for
 27 a Receiver, the Court identified numerous measures intended to spur compliance, including
 28 the assistance of monitors, hearings and status conferences, and implementation of a Pilot

1 Program to reach compliance in staffing. (Doc. 5123 at 5-2, 56-58). In short, the Court
2 has already carefully considered Defendants’ arguments in finding that a Receivership is
3 an appropriate remedy, and does not agree with Defendants’ contention that the Court’s
4 reasoning is in error. The Court’s full analysis is set forth in detail in the Order finding
5 that a Receivership is necessary. Accordingly, Defendants have not shown they are likely
6 to succeed on the merits.

7 Defendants next assert that they will suffer irreparable harm in the absence of a stay
8 because of concerns with federalism and the costs of a receiver that will not recoverable.
9 Again, the Court has carefully weighed these considerations based on its extensive
10 experience with this case, the arguments of the Parties, the detailed, well-supported expert
11 opinions, and the repeated failures of Defendants to comply with the Injunction.
12 Accordingly, the Court cannot find that Defendants will suffer irreparable harm in the
13 absence of a stay where the Court has already found that a Receiver is necessary to correct
14 Defendants’ ongoing constitutional violations.

15 In assessing the public interest and harm to the opposing party, these factors merge
16 when the Government is the opposing party. *Nken*, 556 U.S. at 435. Defendants assert
17 that the public interest lies with maintaining the status quo and the balance of harms favors
18 Defendants because of the costs they will incur. Any harm to Defendants, however, is
19 significantly outweighed by the harm that will occur the longer the unconstitutional
20 provision of healthcare within Arizona’s prisons continues. *See, e.g., Porretti v. Dzurenda*,
21 11 F.4th 1037, 1047 (9th Cir. 2021) (“it is always in the public interest to prevent the
22 violation of a party’s constitutional rights.”). Defendants attempt to argue the opposite—
23 the “significant harms that the State will suffer without a stay outweigh the uncertain harms
24 that Plaintiffs raise,” and that “the only countervailing harm Plaintiffs identify is the risk
25 of continuing harm. But that possibility is present regardless whether the receivership is
26 stayed.” (Doc. 5326 at 4). It is indisputable that Plaintiffs and other parties interested in
27 the proceeding continue to be harmed by the unconstitutional health care conditions in
28 Arizona state prisons, and the longer the conditions are allowed to persist, the more injury

1 Plaintiffs suffer. The Court has found appointment of a receiver will provide a relatively
2 quick remedy to the violations of Plaintiffs' constitutional rights compared to leaving the
3 matter in Defendants' hands, and Defendants have presented no argument or evidence that
4 indicates this finding was error. Thus, issuance of a stay that will delay the Receiver's
5 needed remedial work will substantially injure Plaintiffs.

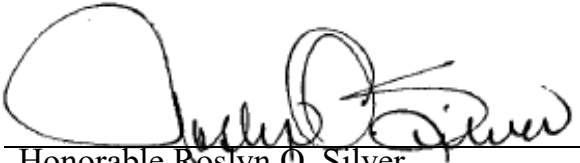
6 For the foregoing reasons, Defendants have not met their burden of demonstrating
7 their entitlement to a stay pending appeal, and their Motion will be denied.

8 The Court will allow a short additional stay of its Order Appointing a Receiver (Doc.
9 5307) for Defendants to apply to the Court of Appeals for a stay. *See* Ninth Circuit Rule
10 27-2 ("If a district court stays an order or judgment to permit application to the Court of
11 Appeals for a stay pending appeal, an application for such stay shall be filed in the Court
12 of Appeals within 7 days after issuance of the district court's stay.").

13 **IT IS ORDERED** Defendants' Motion for Stay of Order Appointing a Receiver
14 (Doc. 5307) Pending Appeal (Doc. 5315) is **denied**.

15 **IT IS FURTHER ORDERED** the Court's Order Appointing a Receiver (Doc.
16 5307) is stayed for 7 days of the date of this Order so that Defendants may apply to the
17 Court of Appeals for a stay. If Defendants do not apply to the Court of Appeals within the
18 time mandated by the Court of Appeals, the Court's Order Appointing a Receiver (Doc.
19 5307) will go into effect at the expiration of the deadline for such an application.

20 Dated this 5th day of August, 2026.

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23 
24 Honorable Roslyn O. Silver
25 Senior United States District Judge
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1 **WO**

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Shawn Jensen, et al.,

10 Plaintiffs,

11 v.

12 Ryan Thornell, et al.,

13 Defendants.
14

No. CV-12-00601-PHX-ROS

ORDER

15 **I. Appointment of the Receiver**

16 On February 19, 2026, this Court granted Plaintiffs' Motion for a Receiver finding
17 the appointment of a Receiver to assume control of the delivery of health care services to
18 the class of prisoners in the custody of the Arizona Department of Corrections,
19 Rehabilitation, and Reentry (ADCRR) was required to conclusively eliminate the
20 constitutional violations within ADCRR of health care pertaining to the class members.¹
21 (Doc. 5123.)

22 Both parties proposed the appointment of Ms. Annette Chambers-Smith. The Court
23 conducted an interview and requested the Parties and the Monitors to conduct due diligence
24 regarding the appointment. The interview and due diligence are complete. (*See* Docs. 5218;
25 5256, 5260.) Accordingly, the Court will appoint Ms. Annette Chambers-Smith as the
26 Receiver.

27 Defendants have represented they intend to appeal the appointment of the Receiver.
28

¹ References to health care include only medical and mental health care.

1 *See Jensen v. Thornell*, CV 26-1746, Dkt 9.1 (9th Cir. May 21, 2026) (“Defendants-
 2 Appellants . . . anticipate appealing from a[n] . . . order . . . appointing a receiver and
 3 defining the receiver’s powers and duties.”). It appears Defendants also intend to seek a
 4 stay of the appointment pending appeal. The Court will delay the effective date of the
 5 Receiver’s appointment pending resolution of a motion to stay if filed. If Defendants opt
 6 not to seek a stay, Defendants shall file that notice within five days of the date of this Order.

7 The Court ordered the parties to address “the proposed duties, powers, and
 8 authorities of the Receiver, [including] how each proposal will extend as far as[,] but no
 9 further than[,] necessary to correct Defendants’ constitutional violations.” (Doc. 5123 at
 10 83.) The Court has evaluated the recommendations of the parties, and resolved what
 11 authorities, responsibilities, and duties are essential for the Receiver to accomplish the
 12 objectives of this Receivership. They are narrowly drawn and extend no further than
 13 necessary to remedy the ongoing constitutional violations and are the least intrusive means
 14 to correct the ongoing constitutional violations. *See* 18 U.S.C. § 3626(a)(1)(A).

15 **II. Authority, Duties, and Responsibilities of the Receiver**

16 During this multi-year, interminable litigation, the Court has identified entrenched
 17 systemic failures in Defendants’ administration of health care to the Plaintiff class,
 18 “including (1) chronic understaffing and failure to enforce contractual provisions with the
 19 third-party vendor, (2) the persistence of nurse driven care and inappropriate assignment
 20 of complex patients to advanced practice practitioners instead of physicians, (3) failures in
 21 the referrals process, (4) data collection and reporting failures, and (5) inadequate
 22 resources, including funding and facilities.” (Doc. 5218 at 2-3.) Accordingly, the Court
 23 found that only a Receiver with the powers and authority necessary to address each of the
 24 systemic failures would adequately remedy the failure of health care. (*Id.*)

25 The Receiver’s authority, duties, and responsibilities to administer and manage
 26 ADCRR’s health care system to ensure constitutional health care for the class members are
 27 what follows.

28 **a. Leadership and Management**

1 The Receiver shall provide leadership and management of the health care system
2 including overseeing, supervising, and directing all ADCRR employees and contract
3 personnel who perform administrative, financial, accounting, contractual, legal, and other
4 operational functions required to ensure constitutional health care is provided to class
5 members. In exercising these responsibilities, the Receiver may consult with the Director
6 of ADCRR, and all relevant and knowledgeable ADCRR employees and contract
7 personnel.

8 **b. Development and Implementation of Operational Plan**

9 1. Within 180 days of the effective date of the Receiver's appointment, the
10 Receiver shall prepare and file the "Receiver's Operational Plan" (the "Plan") designed to
11 remediate ADCRR's unconstitutional health care identified in all of the Court's Orders,
12 and address the constitutional violations identified in the June 30, 2022 Order and Findings
13 of Fact and Conclusions of Law (Doc. 4435). The Plan shall consider the compliance
14 criteria set forth in the April 7, 2023 Order and Permanent Injunction (Doc. 4410), the
15 March 31, 2025 ADCRR Health Care Staffing Analysis and Plan (Doc. 4963), the February
16 19, 2026 Order granting this Receivership (Doc. 5123), and the May 15, 2026 SNU and
17 IPC Health Care Staffing Analysis and Plan (Doc. 5230).

18 2. The Plan shall address the findings of the Court Monitors and include a
19 proposed schedule for completion and resolution of all identified solutions and remedies
20 with measurements and gauges by which to periodically evaluate ADCRR's progress and
21 success. Throughout the Receivership, the Receiver shall report ADCRR's benchmarks
22 and milestones and modify the Plan as deemed essential and required by the Receiver and
23 the Court to achieve the objectives.

24 3. Pending the final draft and implementation of the Plan, the Receiver shall
25 initially implement short-term measures essential for immediately improving critical health
26 care issues and begin the process of restructuring, developing, and implementing the
27 constitutionally adequate health care system.

28 **c. Budgeting and Accounting**

1 On an annual basis, the Receiver shall establish the budget required for all
2 ADCRR health care for the class members. The Receiver shall engage in essential efforts
3 to secure adequate funding in consultation with Plaintiffs and Defendants, the Governor,
4 and the Legislature, including their designated representatives. Consistent with the
5 reporting requirements of II.d.ii below, the Receiver shall establish a calendar for
6 periodically reporting to the Court the status of the ADCRR health care budget, including
7 recommendations, and shall take all necessary steps to ensure transparency and
8 accountability of budget information.

9 **d. Reporting**

10 **i. Permanent Injunction Audits**

11 Monthly audits of all Permanent Injunction requirements are not required
12 of the Receiver. Rather, the frequency of such audits shall be determined by the Receiver
13 with Court approval and based upon an assessment of (1) the significance of each
14 requirement, (2) the time, resource, and costs of monitoring each requirement, and (3) the
15 history of performance or failure of performance for each requirement. While no single
16 factor dominates, the third factor is paramount.

17 **ii. Reports to the Court**

18 The Receiver shall file annual reports with a detailed analysis of the
19 progress of ADCRR in resolving the unconstitutional health care of the class and achieving
20 the requirements of the Plan. And as deemed necessary by the Receiver or the Court, the
21 Receiver shall file additional reports with the Court. These reports shall include (a) the
22 successes and failures achieved in implementing the Plan, including anticipated dates for
23 completion of each requirement of the Plan, (b) the obstacles or impediments to
24 implementing the Plan, and identifying any issue that has interfered with compliance,
25 including but not limited to pinpointing individuals, agencies, or entities responsible for
26 impeding compliance, (c) identification of the required expenditures, with detailed
27 explanations, and (d) all other issues required to allow the Court's analysis, review and
28 approval of the progress made regarding the Plan. The Receiver shall meet with the Court

1 following the issuance of each report and shall maintain direct communication with the
2 Court throughout the Receivership.

3 **III. Powers and Authorities of the Receiver**

4 **a. General Powers**

5 1. All duties and authorities vested by law in the Director of ADCRR relating to
6 the health care of the class members as set forth in A.R.S. § 41-1604 and A.R.S. § 31-
7 201.01 and other governing laws and regulations shall be vested in the Receiver. The
8 Receiver's authority, actions, and decisions shall be subject to review of the Court.

9 2. All duties and authorities of the Director of ADCRR relating to the health care
10 of the class members are enjoined for the duration of the Receivership. Upon termination
11 of the Receivership, those duties and authorities shall be restored to the State and the
12 Director. However, the Director is authorized to confer with the Receiver where the
13 Receiver determines assistance would be advantageous to fulfilling her responsibilities.

14 **b. Dental Care**

15 The Receivership applies to medical and mental health care. However, a clear
16 boundary distinguishing dental care from health care is often not possible in the prison
17 context, particularly regarding contracts outsourcing health care. When this occurs, the
18 Receiver and Director of ADCRR shall engage in efforts to collaborate to resolve the
19 ambiguous dental issues that constitute health care. If the Receiver and the Director are
20 unable to resolve such issues, they shall jointly advise the Court in writing with notice to
21 Plaintiffs and Defendants, and the Court will determine the appropriate and best resolution.

22 **c. Specific Authorities**

23 Without diminishing the Receiver's broad authority set forth in paragraph III.a
24 above, the Receiver shall have the specific authority to exercise the functions that follow,
25 as deemed necessary to fulfill the Receiver's responsibilities and objectives under the Plan.

26 **i. Personnel**

27 1. The Receiver shall have the authority to hire, fire, suspend, supervise,
28 promote, transfer, discipline, and establish compensation for all ADCRR employees and

1 contract staff who perform services related to the health care of class members. This
 2 includes implementing additional personnel policies and creating, abolishing, or
 3 transferring positions related to the health care of class members. *See* A.R.S. § 41-
 4 1604(A)(2),(B)(2)(a-d).

5 2. The authority includes utilizing all employees presently working within,
 6 or assigned to, ADCRR Health Services Division, and these employees shall remain in
 7 their positions within the Health Services Division as the Receiver determines they are
 8 essential for ensuring the constitutional health care of the class. This includes data
 9 collection, contract oversight, and coordination of health care to class members.

10 3. The Receiver shall have the authority to issue instructions to ADCRR
 11 employees and contract staff who perform services relevant to the delivery of health care
 12 to class members. Custody employees and staff are excluded from the Receiver's authority
 13 unless determined essential to the provision of adequate health care and administration of
 14 the Plan. The Receiver shall consult with the Director of ADCRR before finding custody
 15 employees and contract staff are within the Receiver's authority over health care for the
 16 class and the Plan. If the Receiver and the Director disagree, the Receiver shall seek
 17 resolution by the Court.² In resolving the issue, the Court will consider input from both
 18 Plaintiffs and Defendants and will determine the least intrusive and least disruptive means
 19 of providing adequate constitutional health care.

20 **ii. Policies and Procedures**

21 1. The Receiver shall formulate additional essential ADCRR policies and
 22 Department Orders, procedures, protocols, systems, and practices in accordance with the
 23 Plan as relevant to the health care of class members and necessary to establish and ensure
 24 adequate constitutional health care. *See* A.R.S. § 41-1604. As mandated by law, the
 25 Receiver shall "be responsible for the overall operations and policies of the department"

26
 27 ² It is contemplated the Receiver may supervise custody staff if, for example, the staff
 28 provide on-site escort and off-site transportation to and from health care activities. Past
 barriers to provision of health care regarding on-site escort and off-site transportation by
 custody staff have been identified by the Monitors and the Court. (Doc. 4968 at 27.)

1 related to the health care of class members, A.R.S. § 41-1604(A)(1), and “responsible for
2 the development of policies and programs that shall be recommended to the Governor and
3 the Legislature.” A.R.S. § 41-1604(A)(5). The Receiver may “adopt rules to implement the
4 purposes of the department and the duties and powers” of the Receiver. A.R.S. § 41-
5 1604(B)(1).

6 2. The Receiver shall not be responsible for maintaining security at
7 ADCRR. However, the Receiver shall formulate and implement procedures to provide the
8 necessary and adequate security and control of prisoners that pertains to implementation of
9 the Plan and that are required to maintain the health and safety of the class members.

10 **iii. Budgeting**

11 The Receiver shall be responsible for formulating and establishing the
12 annual ADCRR health care budget that ensures the provision of constitutional health care
13 to class members and shall have all authority vested by law in the Director of ADCRR
14 relating to the financing of the prison health care system.

15 **iv. Contracts**

16 1. The Receiver shall have the authority as vested in the Director of
17 ADCRR of all ADCRR’s health care vendors. This includes the authority to negotiate,
18 enforce, terminate, or renegotiate contracts related to the health care of class members in
19 accordance with law and as necessary to achieve the objectives and requirements of the
20 Plan, the provisions of the Permanent Injunction, and all other relevant Orders. *See* A.R.S.
21 § 31-201.01(D) (The Director “shall provide medical and health services for the prisoners”
22 and “may contract for professional services to assist the Director in carrying out this
23 responsibility.”).

24 2. The Receiver shall provide the Director of ADCRR and the Department
25 of Administration with 30 days’ notice before the Receiver implements an amendment to
26 an existing contract or approves a new contract that may impact indemnification or
27 insurance requirements. In an emergency, the Receiver shall provide the Director and the
28 Department of Administration reasonable notice of not less than five days, before

1 implementing such action regarding contracts.

2 **v. Property, Equipment, and Tangible Goods**

3 The Receiver shall have the authority to manage, acquire, dispose of,
4 increase, modernize, repair, and lease property, equipment, and other tangible goods
5 relevant to the delivery of health care to class members. Upon request of the Receiver,
6 ADCRR is required to assist in rectifying all issues relevant to property management,
7 including installation and operation of such property. The Receiver shall work with
8 ADCRR to ensure the allocation of sufficient space for class members to receive clinically
9 appropriate health care and for health care staff to perform services related to the health
10 care of class members. *See* A.R.S. § 41-1604(A)(2).

11 **IV. Office of the Receiver**

12 **a. Compensation**

13 The Receiver shall be compensated a salary of \$500,000 annually.³ The Receiver
14 may seek the reasonable cost of living adjustments each year, and if the Receiver is granted
15 increases, the Court will apply the Administrative Office of the United States Court's
16 policy and Cost of Living Adjustments as the reference to determine the reasonableness of
17 a request. If the Receiver is removed or resigns during the year, the amount of the salary
18 will be prorated to the portion of the year completed prior to the end of the Receiver's
19 contract for that year. If the Receiver does not reside in or near the Receiver's Office, she

20
21 ³ "It is settled . . . that a federal court appointing a receiver 'has full power to fix the
22 compensation of such receiver.'" *Coleman v. Newsom*, 2:90-CV-0520 KJM SCR P, 2025
23 WL 1163350, at *3 (E.D. Cal. Apr. 22, 2025) (quoting *Drilling Exploration Corp. v.*
24 *Webster*, 69 F.2d 416, 418 (9th Cir. 1934)); "A receiver's compensation must be
25 'reasonable.'" *Id.* "The court considers several factors in determining the receiver's
26 compensation, including the benefits obtained by the receiver's work, the time and skills
27 needed for 'proper performance' of the duties imposed 'and their fair value, measured by
28 the common business standards; and the degree of activity, integrity, and dispatch with
which the work of the receivership is conducted.'" *Id.* (quoting *Walton N. Moore Dry*
Goods Co. v. Lieurance, 38 F.2d 186, 192 (9th Cir. 1930)). The Court has considered the
salaries in other cases, the "great, if not incalculable" benefits to be derived from the
Receiver's work, that the Receiver will not receive benefits, and the complexity of the task
required of the Receiver. Thus, the Court finds the salary to be reasonable.

1 will be personally responsible for the costs of lodging in or near the Receiver's Office as
2 well as travel to and from her permanent residence.

3 **b. Office and Staffing**

4 1. The Receiver shall establish the Office of the Receiver and shall have the
5 authority to hire staff and consultants for discharging the duties and mandates of the Plan
6 and this Order. The Receiver shall establish, with approval of the Court, reasonable
7 compensation and terms of service for each member of the Receiver's staff. And the
8 Receiver is authorized to enter into contracts with staff and consultants.

9 2. In order to facilitate the Receiver's duties and authorities, ADCRR and the
10 Department of Administration shall work with the Receiver to obtain sufficient office space
11 within ADCRR's operations center/headquarters, technological infrastructure, and
12 Information Technology programming and software support. Sufficiency and suitability
13 will be determined by square footage, location, and unity, *i.e.* space is deemed sufficiently
14 suitable if the square footage, proximity to key ADCRR operations, and ability to maintain
15 a physically unified operative space, ensure adequate performance of the Receiver's
16 responsibilities pursuant to the Plan.

17 **c. Financial Operations and Reporting**

18 1. Within 30 days of appointment, the Receiver shall create an interest-bearing
19 account, with the Receiver as the signatory and fiduciary. The Receiver may appoint a
20 qualified person to perform this function when necessary. This account shall be designated
21 the "Receiver's Office Fund Account" and shall be maintained solely for the reasonable
22 and necessary expenses incurred and related to the functions and responsibilities of the
23 Office of the Receiver, including, but not limited to, salaries, consulting fees, supplies,
24 equipment, office space, transportation, and travel. The Receiver shall, jointly with
25 Defendants, create a system for regular replenishment of the Receiver's Office Fund
26 Account.

27 2. Within 60 days of appointment, the Receiver shall establish a budget for the
28 Office of the Receiver for the first year of operation and shall propose a budget for each

1 subsequent year of operation, which will be due 90 days prior to the budget year.
2 Throughout the Receivership, the Receiver shall include in each report required by this
3 Order an accounting of all receipts and expenditures including the Receiver's Office Fund
4 Account, and shall initiate an independent financial audit of the Receiver's Office Fund
5 Account on an annual basis.

6 **V. Additional Terms of the Receivership**

7 **a. Costs**

8 All costs incurred during the Receivership shall be borne by Defendants,
9 including all the costs for establishing and maintaining the Office of the Receiver.

10 **i. Initial Costs**

11 Because time is of the essence for implementation of the Plan, the Receiver
12 shall, within 30 days of the effective date of appointment, submit a proposed order to the
13 Court authorizing payment to the Receiver of the funds essential for establishing the initial
14 operating fund for the Office of the Receiver. After the Court's approval, those funds shall
15 be deposited in the Receiver's Office Fund Account established by Section IV(c) above.

16 **ii. Use of Contempt Funds**

17 Pursuant to agreement of Plaintiffs and Defendants, the funds assessed as
18 a consequence of the findings of contempt during this litigation, and currently held by the
19 Court, may be used as additional funding to support the Receiver in the execution of her
20 duties. As of the date of this Order the available funds are estimated as approximately \$2.2
21 million. The Receiver shall seek a Court Order for the release of funds as required to
22 supplement the operation of the Plan.

23 **b. Access**

24 1. The Receiver and the authorized staff of the Receiver shall have unrestricted
25 access as necessary for the Receiver to conduct a fiscal analysis and the Receiver shall
26 have access to relevant records outside the ADCRR to accomplish this function.

27 2. The Receiver and the authorized staff of the Receiver shall have unrestricted
28 access to all ADCRR facilities, with or without notice, as deemed necessary by the

Receiver to accomplish the Receiver's responsibilities pursuant to the Plan and this Order.

3. The Receiver shall have access to governmental records, *e.g.* records maintained by AHCCCS and all others as necessary for the Receiver to conduct a fiscal analysis and the Receiver shall have access to relevant records outside the ADCRR to accomplish this function.

c. Ex Parte Communication

The Receiver and the Receiver's authorized staff shall have authority, equal to that of the Monitors, to communicate *ex parte* and confidentially (without the presence of counsel) with all parties and each party's legal representatives, and with the Court and the Monitors.

d. Subclass

The Receiver shall not be responsible for monitoring Defendants' compliance with the provisions of the Injunction addressing relief for prisoners in isolation (paragraphs 19 through 31 of the Injunction) nor shall the Receiver exercise authority over ADCRR's custody operations related to the Subclass. Monitor Scott Frakes will continue his responsibilities regarding the Subclass and continue reporting to the Court.

e. Governing State Laws, Regulations, and Contracts

The Receiver shall endeavor to perform all responsibilities and duties in accordance with Arizona state laws, regulations, and contracts. If the Receiver determines compliance with state laws, regulations, or contracts will interfere with, or preclude, the Receiver from ensuring the provision of constitutional health care to class members or will otherwise inhibit the Receiver's fulfillment of the requirements of the Plan and this Order, the Receiver shall request the Court waive compliance with those laws, regulations, and contracts.⁴ Upon receipt of any such request, the Court shall solicit input from Defendants

⁴ This Court's expert in 2019, and again in 2025, identified two state laws as persistent barriers to provision of constitutional health care in the Arizona state prison system: (1) The law requiring the privatization of correctional health care, and (2) the law capping specialist compensation. *See* H.B. 2010, 49th Leg., 3d Spec. Sess. (Az. 2009); Ariz. Rev. Stat. § 41-1608; Doc. 4755 at 22, 26-27 (Dr. Stern's 2025 report); Doc. 3379 at 102, 104-08 (Dr. Stern's 2019 report).

1 and Plaintiffs before rendering a decision.

2 **f. Immunity and Indemnification**

3 Defendants shall unconditionally defend and indemnify the Receiver and the
4 Receiver's personnel, including but not limited to all personnel involved in the operation
5 of the Office of the Receiver, in any litigation, causes of action, claims, liabilities, damages,
6 losses, costs and expenses (including reasonable attorneys' fees and expenses), brought
7 against the Receiver and/or the Receiver's personnel regarding activities arising out of, or
8 conducted in the course of the Receiver's official duties and the operation of the Office of
9 the Receiver. *See* A.R.S. § 31-201.01(F).

10 **g. Monitoring**

11 Upon appointment, the Receiver shall assume and undertake all authorities,
12 duties, and responsibilities of ADCRR to provide health care to the class members and
13 ensure compliance with the Permanent Injunction, including those duties of the Monitors,
14 except as noted in paragraph V(d) above. The Receiver shall engage the assistance of the
15 Monitors for a period of 6 months from the effective date of the Receiver's appointment.
16 This period may be extended as the Receiver determines will be useful and is warranted.

17 **h. Length of Receivership**

18 1. The Receivership shall extend for five years. Due to the protracted history of
19 this litigation and the substantial findings of the unconstitutional health care, this estimate
20 may be too generous, and it shall be extended as necessary.

21 2. Any party is authorized to request the Court replace the Receiver for cause.
22 The Court shall afford both parties the opportunity to be heard, and if the Court determines
23 a change in the Receiver is warranted, the parties shall be authorized to recommend
24 replacement candidates.

25 3. The Receivership was ordered by the Court as a last resort, and the Court in
26 this Order has established the authorities of the Receiver with the utmost caution. The Court
27 is in full alignment with the legal principle that a Receivership will not extend beyond what
28 is essential to accomplish constitutionally adequate health care for the class. *See* 18 U.S.C.

§ 3626 (“Prospective relief shall not terminate if . . . that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation”); *see also WB Music Corp. v. Royce International broadcasting Corporation*, 47 F.4th 944, 953 (9th Cir. 2022) (“The decision on whether to terminate a receivership turns on the facts and circumstances of each case, including any relevant equitable considerations”) (quoting 65 Am. Jur. 2d Receivers § 94 (2022)). Prior to a proposed order terminating the Receivership, the Receiver shall prepare a recommendation, supported by facts and data, in favor of or against termination and provide it to the Court.

4. The Court genuinely welcomes the eventual return to the State of Arizona of the operational control of the health care relating to the class members, upon a finding that the unconstitutional violations have been remedied and the unconstitutional health care existing in the State of Arizona prison system has ceased. The Receiver shall work closely with Defendants and the Director of ADCRR to develop effective leadership that generates and supports a seamless transition of health care operations back to ADCRR that will sustain permanent constitutional health care to all class members.

i. Modification and Review

This Order shall be modified upon request of the Receiver, or made to the Receiver, as required for the Receiver to accomplish the responsibilities and to effectuate the eventual return to ADCRR and the State of Arizona of the health care provided to the class members. The Receiver shall have the authority to recommend modification of the Receiver’s Plan and the 2023 Permanent Injunction.

VI. Cooperation

a. General Requirements

All Defendants and their employees, agents, and all persons acting under the direction Defendants, and their counsel, shall fully cooperate with the Receiver and the Receiver’s staff, including promptly responding to all Receiver inquiries and requests and

1 Court orders. The Director of ADCRR shall cooperate and collaborate with the Receiver
2 on all matters essential to the success of the Receivership, including securing funding,
3 clinical and administrative space, adequate training of staff and contract workers, support
4 of the custody staff necessary for providing constitutionally adequate health care, and
5 ensuring, upon the termination of the Receivership, that ADCRR leadership is prepared
6 and capable of adequately assuming control of all functions required to ensure adequate
7 health care for the class members. Any person or entity interfering with the responsibilities
8 and authority of the Receiver or who otherwise attempts to thwart the performance of the
9 Receiver, pursuant to the Receiver's Plan and Orders of the Court, will be subject to a
10 finding of contempt.

11 **b. Resolution of Budget Disputes**

12 Any time the Receiver determines the available funds in the fiscal year's
13 ADCRR budget are inadequate to accomplish the Receiver's authorities and duties, the
14 Receiver shall first consult the Director of ADCRR before notifying the Legislature and
15 the Governor's Office of such deficiency. If the issue is not resolved, the Receiver or the
16 Plaintiffs or Defendants may request resolution by the Court, which may prompt the Court
17 to order the waiver of Arizona State laws, regulations, and contracts that interfere with the
18 requirements and desired outcome of the Receivership.

19 **c. Notice**

20 Counsel for Defendants shall ensure Arizona state agencies are given prompt
21 notice of this Order including the Governor's Office, the Joint Legislative Budget
22 Committee, the Department of Administration, the State Personnel Board, and any other
23 state agencies Defendants deem should be notified. Further, Defendants shall ensure all
24 contractors, employees, and agents (including contract employees and staff) are given
25 prompt notice of this Order. Defendants shall file documentation of their compliance with
26 these notice requirements within 30 days of the date of this Order.

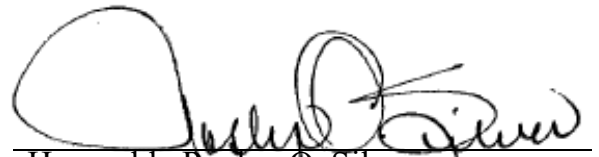
27 **IT IS ORDERED** Ms. Annette Chambers-Smith is appointed the Receiver in this
28 case, effective 21 days following the resolution of any Motion to Stay.

1 **IT IS FURTHER ORDERED** the Receiver is authorized to and shall exercise and
2 carry out the duties and authorities described herein.

3 **IT IS FURTHER ORDERED** if Defendants do not intend to seek a stay, they shall
4 file such Notice within 5 days of the date of this Order.

5 Dated this 17th day of July, 2026.

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Honorable Roslyn O. Silver
Senior United States District Judge

1 **WO**

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Shawn Jensen, et al.,

10 Plaintiffs,

11 v.

12 Ryan Thornell, et al.,

13 Defendants.
14

No. CV-12-00601-PHX-ROS

ORDER

15 This litigation commenced almost 14 years ago. At the outset the Court engaged in
16 a patient and comprehensive undertaking with the parties to find an agreed-upon solution
17 to resolve the serious constitutional violations, which gave rise to the Joint 2014 Plaintiffs’
18 and Defendants’ Stipulated Agreement, also referred to as the 2014 Stipulation.¹ But within
19 a short time, Defendants failed to abide by the Agreement. The violations persisted, and
20 following a five-week trial in 2022, the Court issued extensive Findings of Fact and
21 Conclusions of Law finding that there were pervasive and systemic unconstitutional
22 violations in Defendants’ provision of healthcare. Defendants chose not to appeal the
23 Court’s decision. Rather, they unreservedly agreed to abide by the terms and conditions of
24 the Permanent Injunction jointly crafted by Defendants and Plaintiffs with the active
25 participation of the Court and Court experts, who were selected and approved by
26 Defendants, i.e., the Court Monitors (hereinafter referred to as “Monitors”).² Since

27 ¹ The parties agreed to have the Honorable Magistrate Judge David Duncan preside over
28 enforcement of the agreement.

² The Monitors include lead Monitor Dr. Marc Stern, board certified internist; Dr. Lara

1 agreeing to the injunction, Defendants have never been substantially compliant, have
 2 engaged in repeated, persistent violations, and the chronic unconstitutional prison
 3 healthcare has continued.

4 Before the Court is Plaintiffs' Motion for a Receiver (Doc. 4795.) All parties have
 5 submitted extensive briefing on the Motion. The Monitors provided comprehensive
 6 comments and opinions to which the parties fully responded. Oral argument was held on
 7 September 10, 2025.

8 To declare a government will not accept the constitutional responsibility to provide
 9 adequate healthcare is huge. Ordering the implementation of a receivership is
 10 extraordinary, and the Court has exercised caution and critical reflection in making the
 11 decision. But since the beginning of the case, the Court has forborne imposing the harshest
 12 penalties, opting instead to guide Defendants with the help of the Monitors towards
 13 comprehensive constitutional compliance. But now after nearly 14 years of litigation with
 14 Defendants having not gained compliance, or even a semblance of compliance with the
 15 Injunction and the Constitution, this approach has not only failed completely, but, if
 16 continued, would be nothing short of judicial indulgence of deeply entrenched
 17 unconstitutional conduct. Plainly, only the imposition of the extraordinary can bring an end
 18 to this litigation and the reasons it was brought. An end to unconstitutional preventable
 19 suicides. An end to unconstitutional preventable deaths. An end to unconstitutional failures
 20 to treat those in severe pain. The Motion for a Receiver will be granted.

21 **I. Background**

22 Defendants operate ten prison complexes across Arizona. This action was filed in
 23 2012 by a class consisting of all prisoners in Defendants' custody seeking healthcare and
 24 conditions of confinement in compliance with the Eighth Amendment of the United States
 25 Constitution. In March 2013, the Court certified the class of prisoners seeking injunctive
 26 relief in the form of constitutionally adequate medical, dental, and mental healthcare, and

27 _____
 28 Strick, board certified in Internal Medicine and Infectious Diseases; Dr. Bart Abplanalp,
 licensed clinical psychologist; Dr. Karie Rainer, licensed psychologist; and Donna Strugar-
 Fritsch, BSN, MPA, CCHP. *See* footnote 37 for further information.

1 a subclass of prisoners confined to their cells for more than 22 hours a day and subject to
2 conditions including inadequate out-of-cell time, social isolation, inadequate nutrition, and
3 inadequate mental health treatment.

4 In October 2014, the parties negotiated a settlement agreement, the Stipulated
5 Agreement, which was approved by the Court in 2015 and was intended to resolve all
6 claims. It contained 103 agreed upon healthcare and maximum custody requirements called
7 Performance Measures, which, upon compliance, would free Defendants from monitoring
8 and reporting (Doc. 1185) to establish the healthcare was constitutional.

9 However, what followed between 2015 and July 2021 were twelve motions,
10 initiated by both the Court and Plaintiffs, to enforce the Stipulated Agreement, which were
11 resolved against the Defendants. The Court held multiple, lengthy evidentiary hearings,
12 status conferences, and issued dozens of Orders with clear guidance for mandating
13 compliance with the Stipulation and the Constitution. Concomitantly, the Court issued
14 three Orders to Show Cause why Defendants should not be held in contempt, appointed
15 two investigative experts, and lengthy hearings were held to determine liability. Defendants
16 were held in contempt twice, and ordered to pay millions of dollars in fines, which were
17 upheld on appeal.³

18 Finally, after five years of refusals to comply; findings by the Court that Defendants'
19 legal and factual theories were baseless; the imposition of substantial fines; threats of even
20 more fees and sanctions; and the payment by Defendants of substantial attorney's fees, the
21 Court rescinded the Stipulation and vacated the settlement under Rule 60(b) of the Federal
22 Rules of Civil Procedure (Doc. 3921.) A fifteen-day bench trial followed (*See* Doc. 4335),
23 and, in 2022, the Court issued a 200-page Order with Findings of Fact and Conclusions of

24
25 ³ "The Stipulation provides the district court the authority to 'enforce this Stipulation
26 through all remedies provided by law,' subject to a few limitations. Ordering Defendants
27 to comply with a specific subset of the Performance Measures they agreed to in the
28 Stipulation is one such 'remed[y] provided by law,' namely, an Injunction requiring
specific performance. We have previously upheld the district court's power to issue such
Injunctions to enforce the Stipulation in this case." (Doc. 3577-1 at 15, Mandate of the
Ninth Circuit Court of Appeals Case No. CV 18-16358 (alterations in original.))

1 Law identifying the same persistent, unconstitutional conduct by Defendants regarding
2 healthcare, and housing certain prisoners in isolation. (*Id.*) The Court identified the
3 overarching failures in the delivery of healthcare as seriously insufficient staffing,
4 inappropriate use of nurses beyond the scope of their licensure, failure to manage complex
5 patients or employ a differential diagnosis approach, substantially inadequate mental health
6 treatment, and a deficient electronic health care record system. All these critical
7 deficiencies were found to exist at every one of Defendants' complexes, rendering the
8 healthcare delivery systemically unconstitutional.

9 Defendants chose not to appeal. Rather, they agreed to an Injunction that complied
10 with the statutory limitations on injunctions addressing prison operations that was designed
11 to end unconstitutional healthcare within Arizona's prisons. (Doc. 4335 at 180.) The parties
12 proposed experts to assist with crafting the Injunction, and Dr. Marc Stern was strongly
13 recommended by Defendants as "[dedicated] to the design, management, and operation of
14 health services in corrections settings, [who would] provide this Court and the parties with
15 valuable guidance in crafting an Injunction regarding the provision of medical care at
16 ADCRR." (Doc. 4339 at 4.) It was uniformly agreed, and expressly by Defendants, that
17 Dr. Stern's past work in this litigation uniquely qualified him to assist with drafting the
18 Injunction requirements, and he was appointed.⁴ (Doc. 4358 at 8.) Without objection, Dr.
19 Stern's recommended additional experts for mental healthcare and custody conditions
20 imposed on the subclass were also appointed.⁵

21 From January to March 2023, the Monitors, the Court, and Plaintiffs' and
22 Defendants' counsel engaged in lengthy discussions; suggestions and objections were
23 made and mutually resolved by both parties. (Doc. 4410 at 3.) Finally, a stipulated
24 Injunction was filed with the Court by the parties with the tacit promise that compliance

25 ⁴ It is crucial to note Defendants recommended Dr. Stern despite his testimony in 2018
26 before Magistrate Judge Duncan reporting Defendants had serious problems that
27 "precluded accurate monitoring" and that Defendants' poor compliance may actually "be
worse" than what the experts found. (Doc. 3921 at 13.)

28 ⁵ The Court appointed Dr. Bart Abplanalp and John-Michael McGrath to assist Dr. Stern.
(Doc. 4362.)

1 would bring an end to the system-wide unconstitutional healthcare and end the Court's
2 involvement in the litigation. (Doc. 4402) The parties informed the Court:

3 Since [the issuance of the draft Injunction], the parties have
4 engaged in extensive negotiations with each other and the
5 Court-appointed experts regarding the terms of the draft
6 Injunction and **how best to expeditiously remedy the**
7 **constitutional violations found at trial.** [See Doc. 4335.] **The**
8 **parties are pleased to report that they have come to an**
9 **agreement with each other and with the Court-appointed**
10 **experts as to the terms of an Injunction.**⁶

11 (Doc. 4402 (emphasis added.)) On April 7, 2023, the Court signed the jointly agreed
12 Injunction, stressing and underscoring the reasons that brought it about. (Doc. 4410 at 11-
13 67.) The Court noted:

14 **Defendants have fought every aspect of this case at every**
15 **turn. Defendants entered into a settlement agreement**
16 **where they claimed they would improve the care provided**
17 **to prisoners. . . . Yet almost immediately Defendants failed**
18 **to perform those obligations and continued in that failure.**
19 Instead of acknowledging their failures, Defendants kept
20 inaccurate records and unreasonably misread the settlement's
21 requirements to their advantage. During trial, Defendants
22 presented arguments and witnesses that were manifestly
23 unreliable and unpersuasive. And on some aspects, Defendants
24 presented no meaningful defense at all. . . . [T]rial established
25 **Defendants blatantly had not made any serious effort to**
26 **remedy the flaws highlighted by this litigation.**

27 (*Id.* at 4-5 (emphasis added.))

28 To evaluate Defendants' performance throughout the Injunction, again with the
mutual approval of the parties, the Court appointed the same experts to serve as neutral

⁶ The parties agreed that "by filing this Stipulation [and if] the Court enters the Injunction attached as Exhibit A as an order of the Court, neither party will appeal the order, in whole or in part." (Doc. 4402 at 2.)

1 Monitors: Dr. Marc F. Stern⁷ and Dr. Bart Abplanalp⁸ (who had assisted in crafting the
 2 Injunction), Dr. Lara Strick,⁹ and Mr. Scott Frakes.¹⁰ The agreed fundamental imperative
 3 of the Injunction was that Defendants were required to monitor all elements of the
 4 Injunction on a monthly basis and make their findings available for inspection and analysis
 5 by the Monitors. (*Id.* at 7.) And, as also required by the Injunction, the Court appointed Dr.
 6 Stern and Ms. Donna Strugar-Fritsch to “conduct a staffing analysis and plan of health care
 7 positions at each location”¹¹ (*Id.* at 14.)

8 From the beginning, the mandate of the Injunction was that Defendants were to fill
 9 all required vacant staff positions. The Injunction expressly states, “increased salaries may
 10 be necessary to reach adequate staffing levels.” (Doc. 4410.) Moreover, the Injunction
 11 anticipated the Staffing Plan would ultimately require hiring many more staff, and in
 12 particular, the Injunction required that vacant staff positions were to be filled no later than
 13 July 7, 2023. (Doc. 4445.) But on July 14, 2023, Dr. Stern sent a letter informing the Court
 14 that staffing as of July 7 was “markedly inadequate to meet the immediate requirements of
 15 the [Injunction].” (Doc. 4446 at 1.) This was a disturbing revelation in light of the June
 16 2022 Findings of Fact Order in which the Court found one of the “core issues” was that

17 ⁷ Dr. Stern has been appointed as an expert pursuant to Rule 706 of the Federal Rules of
 18 Evidence to assist the Court in various aspects of this case since December 11, 2018. (*See*,
 19 *e.g.*, Docs. 3089, 3127, 3133, 4352.)

20 ⁸ Dr. Abplanalp has been appointed as an expert pursuant to Rule 706 of the Federal Rules
 21 of Evidence to assist Dr. Stern in addressing mental healthcare since May 30, 2019. (*See*,
 22 *e.g.*, Doc. 3269, 4362.) In April 2025, the parties stipulated to appoint Dr. Raner as a Rule
 706 expert to assist with mental health monitoring. (Doc. 4859.)

23 ⁹ On March 17, 2023, the parties stipulated to appoint Dr. Lara Strick as a Rule 706 expert
 24 to assist the Court in monitoring Defendants’ compliance with Injunction. (Docs. 4402,
 4410.)

25 ¹⁰ On January 13, 2023, the Court appointed Scott Frakes as an expert pursuant to Rule 706
 26 of the Federal Rules of Evidence to serve as an independent expert to the Court to address
 27 the maximum custody aspects of the Injunction, replacing former Rule 706 expert John
 Michael C. McGrath. (*See* Docs. 4381, 4362.)

28 ¹¹ On May 9, 2023, Donna Strugar-Fritsch was appointed as a Rule 706 expert to assist in
 monitoring and performing a staffing analysis in compliance with the Injunction. (Doc.
 4425.)

1 staffing levels “are so inadequate” that “the provision of constitutionally mandated care
2 [was] impossible.” (Doc. 4335.) In other words, within three months of the effective date,
3 Defendants were already in violation of the Injunction. On July 20, 2023, the Court set an
4 immediate hearing to develop a timeline for Defendants to achieve compliance, expressing
5 alarm that “Defendants have been fully aware since at least January 9, 2023, they needed
6 to begin hiring additional staff.” (*Id.* at 1-2.)

7 On August 17, 2023, the Court held a status conference to address Defendants’
8 staffing non-compliance, emphasizing, “there must be complete compliance with the
9 Injunction to get the federal court out of the case.” (Doc. 4469 at 4-5.) Plaintiffs pointedly
10 expressed their concern regarding Defendants’ failures but informed the Court they did not
11 then intend to seek immediate sanctions. Plaintiffs reflected that Defendants appeared to
12 be “making sincere” attempts to comply with the Injunction. (*Id.* at 5.) Defendants
13 expressed solidarity with Plaintiffs, Dr. Stern, and his team, to reach compliance. However,
14 it was also noted as very troubling that Defendants lacked, or at least failed to produce,
15 critical information needed to discern exactly what staff existed and what was
16 constitutionally required. (*See generally*, Doc. 4469.) However, it was clear, under any
17 methodology, Defendants needed significantly more staff to achieve compliance with the
18 Injunction and the Constitution.¹²

19 A follow-up status conference was held on December 1, 2023 (Doc 4510) where
20 Plaintiffs’ counsel repeated, without disagreement from Defense counsel, “I don’t think
21 there is any dispute about the fact that staffing in the prisons at the moment is grossly
22 deficient.”¹³ (Doc. 4521 at 12.) Plaintiffs added their specific observations that while
23 visiting Lewis Prison, it was obvious the significantly low staffing was impacting “patient
24 care because there’s no providers and not enough nurses to provide care.” (*Id.* at 13-14.)

25 ¹² Plaintiffs’ counsel, the Monitors, and the Court also expressed strong concern about
26 Defendants’ excessive use of overtime and registry personnel in an attempt to meet staffing
27 requirements, which were specifically prohibited by the Injunction. These temporary
28 workers hired from healthcare employment agencies were specifically prohibited because
of high turnover leading to significant risk to patients.

¹³ Dr. Ryan Thornell, Director of ADCRR, was in attendance at this hearing.

Defendants provided a highly unacceptable response by first disavowing responsibility, repeatedly claiming the obligation for staffing was with the contractor, NaphCare. “We’re not satisfied with the rate in which staffing has been increased. And we’re continuing to put on---put on pressure on NaphCare to increase their hiring, to increase their salaries in order to successfully recruit and successfully retain good staff members.”¹⁴ (*Id.* at 8.) The most daunting revelation was Defendants’ admission that existing staffing did not even meet the levels of the prior NaphCare contract, which required that at least 300 positions be immediately hired. This was appalling because the Court found in the June 2022 Findings of Fact that personnel at each of Defendants’ facilities was “profoundly understaffed.” (Doc. 4335 at 22.) Further, Defendants effectively admitted at trial in 2021 that their staffing levels were insufficient. (*Id.* at 24.) What is more, the evidence presented showed Defendants’ former private contractor, Centurion, opined that even if all prisons were fully staffed under Defendants’ calculation, such staffing would be insufficient to provide adequate healthcare. (Doc. 4335 at 22.)

Because of serious concerns about the nature and type of non-compliance with the Injunction, the Court ordered the Monitors to conduct an evaluation of Defendants’ compliance and file a report early the next year. And on February 2, 2024, the Monitors filed the First Interim Report. Some very minor improvements in healthcare services were first noted, but otherwise the Monitors found Defendants “substantially noncompliant” and that Defendants’ efforts to self-assess were totally “unreliable.” The Monitors provided a written, detailed discussion of the specific deficiencies as they had done in response to the monthly reports and offered useful suggestions to Defendants for resolution. Of gravest concern, the report included comprehensive medical evaluations conducted by the Monitors of some patients, finding the patients had received very poor medical treatment, including a patient who committed suicide, which the Monitors deemed preventable and that occurred because of “wholly inadequate” care.¹⁵ (Doc. 4539 at 15.)

¹⁴ Precisely what pressure, if any, was ever brought to bear was never identified at the hearing or anytime thereafter.

¹⁵ On February 2, at the joint urging of the parties because of the critical failure of staffing,

1 On February 16, 2024, Defendants filed a response to the Monitors report beginning
 2 with the astonishing complaint that “distinctively absent” was the Monitors’ failure to
 3 provide Defendants with “a comprehensive plan of how to achieve compliance with the
 4 Injunction” or a “how-to guide.” (Doc. 4553 at 2.) Such a bizarre undertaking by the
 5 Monitors was never contemplated by the Injunction or ordered by the Court.¹⁶ Remarkably,
 6 despite having collaborated with the Monitors for well over a year, and having
 7 wholeheartedly recommended and approved them as highly competent, Defendants
 8 broadly and incomprehensively questioned whether the Monitors’ opinions were too
 9 “subjective” and not “clinically appropriate.” (*Id.* at 3-4.)

10 In contrast, Plaintiffs provided a very critical assessment of Defendants’ quality of
 11 care: “Nearly one year after the courts issuance of the injunctive relief, and more than 18
 12 months after it found the provision of medical and mental healthcare . . . violate the
 13 Constitution, the Court’s monitoring team’s Status report details widespread and
 14 substantial violations of the Injunction.” (Doc. 4552 at 2.) Emphasizing the blatantly
 15 obvious, Plaintiffs added Defendants were already in violation of the Injunction:

16 [The] failure to create a viable self-monitoring system, and
 17 inability to measure or demonstrate compliance, must be
 18 presumed to be noncompliance.

19 (Doc. 4552.)¹⁷ Plaintiffs also declared Defendants did not deserve even the minor credit
 20 offered them by the Monitors.

21 the Court reluctantly granted the parties’ Motion to Amend Section 1.16 of the Injunction
 22 to allow Defendants a very limited use of Registry and Agency staff to fill some portion of
 23 the full-time equivalent positions (FTE) in each job Category. (*Supra* footnote 12.)

24 ¹⁶ The total agreed upon fees and expenses paid to the Monitors for their work required by
 25 the Injunction is substantial. To date, the Monitors have cost in excess of \$4 million on
 26 healthcare alone. Prior to agreeing to the specific parameters of the detailed Injunction,
 27 Defendants never indicated they required a tutorial as how they would comply. If the
 28 Monitors had also been ordered to undertake extensive tutoring to help Defendants achieve
 compliance, the cost to the Defendants would have skyrocketed. What is more, the
 Monitors informed the Court they readily offered oral or written training and assistance to
 Defendants, who expressed no interest in accepting it.

¹⁷ Plaintiffs were specifically concerned: (1) Whether meaningful post-mortem plans were
 occurring; (2) that no English fluency assessments were being made; (3) with failures

1 In Reply, Defendants acknowledged the “excessive amount of time it has taken to
 2 obtain adequate healthcare staffing,” but made the shocking argument that they should be
 3 excused because of Legislative “budget limitations,” and offered “to submit a request for
 4 supplemental appropriation,” but warned: “it might not be approved” and, worse yet, the
 5 “earliest the funds would be distributed (was) July 1, 2025,” that is, one and a half years
 6 later. Finally, Defendants, in closing, made the startling request that the Court order non-
 7 party contractor, NaphCare, to increase salaries so Defendants could avoid “the necessity
 8 of engaging in the legislative budget approval process.” (Doc. 4583 at 3-4.)¹⁸

9 On March 14, 2024, in advance of the next status hearing to assess compliance by
 10 the Defendants or to proceed with enforcing the Injunction, the Court, by Order,
 11 emphatically reminded Defendants that the Injunction had been in place for almost one
 12 year, and Defendants had not yet developed the fundamental and essential “mechanism for
 13 assessing compliance with 130 provisions.” (Doc. 4570 at 1.) The Court categorically
 14 clarified the Monitors were never required to provide a “how-to guide” or train Defendants
 15 how to competently achieve compliance with the Injunction. And relying on the Monitors’
 16 reports and responses, the Court declared the healthcare system “remains fundamentally
 17 lacking, and the Monitor’s report documents continued adverse outcomes that show

18
 19 regarding specialty care; and (4) with lack of evidence supporting that mental health
 20 patients were not being placed in restraints.

21 ¹⁸ The Injunction terms and requirements were drafted and agreed upon, and presumably
 22 negotiated, in good faith by the Defendants, and then approved and ordered by the Court
 23 on April 7, 2023. (Doc. 4410.) The Injunction expressly states, “increased salaries may be
 24 necessary for Defendants to reach adequate staffing levels.” (Doc. 4410.) And, if so, those
 25 increases by contract with NaphCare were explicitly to be borne by Defendants. (Docs.
 26 4555; 4566; 4583.) At no time prior to the effective date of the Injunction was the Court
 27 informed by Defendants they were unable to, or unwilling to, comply with all terms of the
 28 Injunction for any reason, and particularly because funds were not, or would not be,
 available to ensure compliance. (*See also* Docs. 4555; 4410; 4583.) Defendants have been
 constantly reminded orally and in writing for the almost 14 years of this litigation of Ninth
 Circuit authority mandating “lack of resources is not a defense to a claim for prospective
 relief because prison officials may be compelled to expand the pool of existing resources
 in order to remedy continuing Eighth Amendment violations.” *Peralta v. Dillard*, 744 F.3d
 1076, 1083 (9th Cir. 2014.)

1 prisoners remain at risk.” (*Id.*) Significantly, the Court made the express finding that
 2 Defendants were in violation of the Injunction because it mandated they “fill all positions
 3 required by the current contract with the healthcare vendor” no later than “July 7, 2023.”
 4 (*Id.* at 2.) The Court voiced serious concern with Defendants’ repeated ill-conceived
 5 requests that the Court engage in enforcing Defendants’ contract with NaphCare by
 6 sanctioning NaphCare for not filling staff positions. Defendants were directed to the critical
 7 provision in the Injunction: “Defendants must comply with the Injunction and any disputes
 8 between Defendants and the private healthcare contractor are beyond the scope of the
 9 Injunction,” and pointed to the very contract provisions with NaphCare that called for
 10 “staffing offsets/paybacks for unfilled hours of service” and the imposition of “monetary
 11 sanctions,” and, of substantial significance, even “termination” of the contract if NaphCare
 12 failed to perform under the contract. (Doc. 4570 at 4.) This was to forcefully bring to
 13 Defendants’ mind the abundant, viable contractual enforcement tools they had to force
 14 NaphCare’s compliance with the Injunction and Constitution. And, most importantly,
 15 Defendants were warned if those remedies were not pursued, it would “be exceptionally
 16 difficult for Defendants to show they ‘took *all* reasonable steps to comply with the
 17 [Permanent Injunction].’” *Kelly v. Wengler*, 822 F.3d 1085, 1096 (9th Cir. 2016.)¹⁹ (Doc.
 18 4570 at 4.) Finally, the Court warned of an Order to Show Cause why Defendants should
 19 not be held in contempt. (*Id.* at 2.)

20 On March 15, 2024, the Court held another hearing to determine if Defendants had
 21 reached compliance with the Injunction, and, if not, whether they were prepared to face the
 22 consequences. (Doc. 4581.) The Monitors, who had spent hundreds of hours evaluating
 23 Defendants’ performance and engaging with Defendants to assist them with compliance,
 24 testified Defendants were plainly not in compliance and the healthcare they were providing
 25 was constitutionally deficient. (*See generally id.*) Again, the Monitors’ greatest concern
 26 was the persistent understaffing and the numerous temporary positions, resulting in a lack
 27

28 ¹⁹ Critically, the contract explicitly states: “NaphCare must “meet all federal and state constitutional amendments [and] court orders.” (Doc. 4570.)

1 of continuity of care, and that the care was not patient-centered and lacked follow-up,
2 particularly for those too sick to advocate for themselves. (*Id.*) Specifically, the Monitors
3 reported from their review of documents and their many interviews of staff and patients,
4 overall (1) documentation of care was “poor,” (2) the electronic medical record had not
5 been repaired, (3) there was a failure to pursue the fundamental change in the model of
6 care which mandates “a patient centered model,” and (4) because the prisons continue to
7 be poorly staffed, it was impossible to reach that goal. (*Id.*) The Monitors called attention
8 to some specific individual cases that demonstrated grave danger to prisoners. One patient
9 was locked in a room without one-to-one monitoring; the patient was never allowed to
10 leave his room and was always “on a mattress on the floor of his cell.” (*Id.* at 24.) In mental
11 health, there were patients who were too delusional and schizophrenic to be able to seek
12 help through the telemonitoring system and confidential communications with patients
13 were “nearly impossible.” (*Id.* at 29-31) One patient committed suicide that likely could
14 have been avoided, who had a known history of self-harm, but was only seen monthly,
15 “cell-side,” with a simple inquiry: “Are you okay?” The Monitor stated the “lack of care,
16 in [his] opinion, likely contributed to [the patient’s] death.” (*Id.* at 47-48.) And it was
17 reported there was an alarming “spate of suicides within the past several months.” (*Id.* at
18 40.)

19 Plaintiffs reported they spent numerous hours evaluating healthcare compliance
20 through conversations with staff and prisoners. Plaintiffs learned of reported failures to
21 diagnose “serious problems,” including cancer. Female prisoners stated they put in
22 healthcare requests describing serious medical and mental health problems and received
23 delayed and inadequate responses, such as “just drink more water.” (*Id.* at 55.) And
24 Plaintiffs reported those who complained of mental health problems were not given care.
25 Rather they were advised “to go on suicide watch” in order to receive any type of individual
26 care. (*Id.* at 56.)

1 Director Thornell offered a promise to attempt to “pressure” NaphCare to ensure it
 2 provided adequate salaries and adequate staffing to comply with the Injunction and the
 3 Constitution.²⁰ The Court addressed Director Thornell:

4 THE COURT: And you’re going to hear this again as long as—
 5 until it’s solved, and you’ve heard it before. Have you
 6 discussed or considered increasing staff, increasing salaries?
 7 As you know, that is the footprint we’ve had as a problem in
 this case. And you know that, Director Thornell. Right?”

8 DIRECTOR: “Yes, Your Honor, and we discuss it.”

9 THE COURT: “So you’ve heard it. Focus on staff, salaries,
 10 either within the contract you have now or whatever you’re
 11 going to do in the future.”

12 DIRECTOR: “Yes, Your Honor.”

13 THE COURT: “Have I made myself clear?”

14 (*Id.* at 80.)

15 Plaintiffs and the Court accepted the Director’s promise, and the Court again
 16 resisted imposing contempt sanctions, but warned continued failures would prompt severe
 17 consequences. (*Id.*) The parties agreed to attempt to offer the Court a stipulated order
 18 mandating Defendants comply with the Constitution by forcing NaphCare to provide full
 19 staffing and higher salaries. But a joint stipulated order was never filed. Rather, Defendants
 20 again advanced the startling proposal, contrary to law, that the Court issue an order that
 21 expressly mandated the Defendants order NaphCare to “pay wages in accordance with the
 22 contract if vacancies continued.”²¹ The Court flatly rejected the unwarranted request.

23 ²⁰ Again, no further details were ever provided to the Court as to what measures were taken
 24 to ensure NaphCare’s compliance other than Director Thornell mentioning sending
 25 “multiple letters” to NaphCare. (Doc. 4602.)

26 ²¹ NaphCare filed a Motion to Intervene, boldly claiming it had “significantly improved
 27 the healthcare system.” Because the Motion was untimely, it did not meet the procedural
 28 requirements, and NaphCare implied it had no obligation to comply with the Injunction
 and thereby the Constitution, it was denied without prejudice, and never refiled.
 Particularly appalling was that Defendants did not object to the motion despite NaphCare’s
 claim that NaphCare had significantly improved the healthcare system and NaphCare’s

1 On April 18, 2024, the Court issued another order regarding Defendants' failure to
 2 address the lack of adequate staffing and reminded Defendants of the obligation to
 3 determine if NaphCare was in violation of the contract and, if so, to proceed to enforce it.
 4 (Doc 4602.) On April 16, 2024, Dr. Stern and Ms. Strugar-Fritsch submitted the ADCRR
 5 Health Care Staffing Analysis and Plan required by the Injunction, definitively establishing
 6 the staffing necessary to comply with the contract and the law and calling for significant
 7 increases.²²

8 On May 16, 2024, the Court held the final status conference of the year, where the
 9 proposed staffing plan was discussed²³ (Doc. 4634), and the Monitors recommended a Pilot
 10 Project to thoroughly test the findings, stating: "We proposed shifting from a hundred
 11 percent implementation [of the staffing plan.]" (Doc. 4634 at 27-28.) The Pilot Project was
 12 designed to allow Defendants to evaluate and report to the Court precisely how significant
 13 of a staffing increase was necessary, and what specifically would be required for the
 14 statewide implementation of staffing. (*Id.* at 107.) Plaintiffs favored and endorsed the Pilot,
 15 and Defendants tentatively agreed, but demurred, again, complaining of lack of funding.
 16 In particular, Defendants stated "we're operating at a significant deficit Because for
 17 this fiscal year they're already many millions of dollars over budget because of the
 18 Injunction and the healthcare and the NaphCare contract."²⁴ (*Id.* at 112.) At the close of the
 19 hearing, the Court declared that after a careful review of "all of the paragraphs of the
 20 Injunction, it is likely 75 percent of them have been violated . . . the State is already clearly

21 statement that though it did not intend to relitigate the Injunction, it fully intended to engage
 22 in "tinkering" with provisions of the Injunction such as "staffing levels" in clear violation
 23 of the Injunction.

24 ²² The Plan was developed after "extensive collaboration and coordination with the
 25 Monitoring team . . . site visits to three complexes, consultation with Plaintiffs and
 26 Defendants including extensive consultation with the ADCRR Health Services Division,
 and conversations with NaphCare Facility Health Administrators, providers, mental health
 leads, and others." (Doc. 4599.)

27 ²³ Director Ryan Thornell was in attendance.

28 ²⁴ Defendants continued: "Well, here's the problem, Your Honor, we don't have the money
 to do this. It would require a new contract with NaphCare. It would require approval of the
 JLBC." (Doc. 4634 at 118.)

1 in violation of the Injunction.” (*Id.* at 123-24.) Defendants did not respond. However, the
 2 Court opted to forgo issuing an order to show cause until the Pilot was completed because
 3 of the parties’ joint agreement to implement the Pilot.

4 On June 3, 2024, with the agreement of all parties, the Court ordered
 5 implementation of the Pilot Project, but expressed serious concerns regarding Defendants’
 6 ongoing failure to aggressively undertake the dramatic improvements required by the
 7 Injunction:

8 Finally, the Court notes its concern that over one year after the
 9 Permanent Injunction was issued and two years since entry of
 10 the Court’s Findings of Fact and Conclusions of Law, much of
 11 the briefing regarding the staffing plan reflected Defendants’
 12 continued resistance to meaningful efforts to increase staffing
 13 to achieve constitutional levels and avoid catastrophic
 14 outcomes. At this point, **Defendants have admitted more
 staff is necessary and it is difficult to view their behavior as
 anything other than attempts to delay issuance of a
 statewide staffing plan. The Court’s patience has run out.
 Too many individuals are needlessly suffering while
 Defendants have deployed many delay tactics. Defendants
 shall immediately establish the Pilot program and in a
 subsequent Order, Defendants will be required to establish
 they have taken all reasonable steps to comply with the
 Permanent Injunction.**

15 (Doc. 4637 at 8 (emphasis added).) The Court also traced Arizona’s decades long history
 16 with numerous private healthcare companies’ failure to provide adequate staffing and
 17 healthcare in accordance with the Constitution. The Court stated the jointly agreed-upon
 18 Injunction was intended to resolve understaffing and incompetent staffing by requiring
 19 Defendants to immediately fill the positions and Defendants refused. However, both
 20 Plaintiffs and the Court decided against urgently pursuing sanctions because Defendants
 21 promised they were committed to filling positions and engaging in the Pilot in good faith.
 22 The Pilot was initiated at two units selected by Defendants.²⁵

23 On September 25, 2024, the Monitors filed their first Pilot report, stating Defendants

24 ²⁵ The Arizona State Prison Complex–Yuma, Dakota Unit (Dakota), and the Arizona State
 25 Prison Complex–Perryville, San Carlos Unit (San Carlos).

1 showed a lack of will and no commitment to success. (Doc. 4681.) On October 7, 2024,
 2 Plaintiffs specifically identified numerous failures by Defendants to comply with the Pilot,
 3 including the failure to hire any of the critical positions, and to backfill those borrowed for
 4 the Pilot, and the failure to provide sufficient space. Plaintiffs reluctantly recommended
 5 the Pilot continue, but requested the Court consider imposing severe financial sanctions
 6 against Defendants for their substantial violations of the Pilot, and order full briefing on
 7 other remedies, including appointment of a receiver and declaring unconstitutional the
 8 privatization of prison healthcare. On November 15, 2024, a second Pilot report from the
 9 Monitors showed Defendants continued to resist and plainly refused to engage in good
 10 faith implementation of the Pilot (Doc. 4700.)²⁶ The Court declared once the Pilot
 11 concluded, the Court would order comprehensive briefing on all possible sanctions and
 12 appropriate remedies against Defendants. (Doc. 4699.)

13 In early October 2024, Monitor Dr. Abplanalp informed the Court of an
 14 investigation of a cluster of suicides and filed a report on October 17, 2024, revealing
 15 staggering deficiencies in Defendants' mental healthcare delivery. Not only were numerous
 16 specific Quality Indicators of the Injunction violated, but Dr. Abplanalp concluded if
 17 Defendants had adhered to the requirements in the Injunction, "it would have decreased
 18 the probability of, if not prevented, these deaths." (Doc. 4691.) Further, he emphasized the
 19 flaws were the same as those he had frequently observed since his evaluation began in
 20 April of 2023.²⁷ Defendants attempted to refute the Monitor's evaluation with the

22 ²⁶ In particular, the Patient Centered Care Model ("PCCM") Pilot operations were
 23 indefinitely suspended at San Carlos; in short, Defendants unilaterally abandoned the Pilot
 24 at San Carlos. (*Id.*) The experts noted the project required additional space to be successful,
 25 and that allocating this space was the "highest priority," but Defendants refused. (Doc.
 26 4800.)

27 ²⁷ It was reported that one suicide patient had auditory hallucinations that did not prompt
 28 Defendants to consider undertaking a prompt comprehensive evaluation. Another patient's
 father called the day before the suicide and informed Defendants his son was not receiving
 medication and was in distress, but no action was taken. A third suicide patient had
 previous diagnoses of schizophrenia, antisocial personality disorder, psychosis, and
 anxiety disorder, but no record of a comprehensive mental health evaluation existed.

1 dismissive comment “they do not tell the full story,” and offered beyond-the-pale excuses
 2 for their failures to comply with the Quality Indicators required by the Injunction that were
 3 designed to save lives. (Doc. 4818 at 11-12.)

4 On January 7, 2024, the Monitors filed the Second Interim Report dated December
 5 20, 2024, reflecting evidence gleaned and analyzed since their work began on April 7,
 6 2023. (Doc. 4755.)²⁸ The Monitors acknowledged improvements in the conditions of
 7 confinement for the subclass, but found the delivery of all healthcare was “poor” with little
 8 improvement since the Injunction became effective, placing prisoners at “significant risk
 9 of serious harm, including death.” (*Id.* at 2.) And in fundamental violation of the core
 10 principle of the Injunction, they found advance practice practitioners—nurse practitioners
 11 and physician assistants—were still caring for the complex and emergency medical patients
 12 that mandate care by physicians. Further, there were numerous mentally ill patients still
 13 not receiving treatment necessary to ensure their safety. And still, over 100 positions that
 14 were compelled by the prior and existing contract with NaphCare had not been filled,
 15 reflecting lack of fundamental compliance with the Injunction. The Electronic Health
 16 Records (“EHR”) were still “poorly adapted,” thousands of consultations with off-site
 17 specialists were delayed, and “virtual visits [were] rampant.” The report concluded in
 18 summary: “And patients are dying.” (*See generally id.*)

19 In addition to the cluster of five suicides Monitor Dr. Abplanalp reported in October
 20 2024, another, more recent suicide was identified and determined to have been “likely
 21 avoidable” because the patient had received incompetent care. And the Monitors identified
 22 four recent, newly discovered non-suicide related deaths that were determined to have been
 23 caused by “serious and pervasive systemic health care delivery failures.” The report

24
 25 ²⁸ Significant reliance by the Monitors was always placed on Defendants’ self-evaluations,
 26 Defendants’ documents, including electronic health records, complaints by prisoners,
 27 concerns submitted by everyone involved, conversations with staff and Plaintiffs’
 28 attorneys, and site visits. Generously, the Monitors made mention of the efforts and
 devotion of the front-line and supervisory staff. The “systems are broken” but “they try
 hard” and have been “asked to do something beyond their capabilities or outside their
 expertise.” (Doc 4755 at 1.)

1 concluded these deaths likely could have been avoided if there had been compliance with
2 the Injunction. (Doc. 4755 at 2.)

3 Regarding Defendants' claim that "they are closing in on 100%" compliance, the
4 Monitors found this patently false because Defendants' method of measuring compliance
5 was wrong. (*Id.* at 3.) For example, Defendants alleged their mental health evaluations are
6 "comprehensive" whereas the Monitors found Defendants' performance measure is "closer
7 to 0%." (*Id.*) Regarding off-site specialist referrals, Defendants readily admitted from their
8 self-evaluations the care provided "is often not clinically appropriate" (*id.* at 5), and in
9 violation of the Injunction. And the Monitors emphasized the "degree to which [Defendants
10 are] failing to comply . . . is hard to imagine." (*Id.* at 6.) For example, only 3% of the
11 referrals outside the prisons were timely, meaning a shocking "7,140" or 97% of these
12 critical, life and death referrals were "not timely" or never occurred at all. (*Id.*)

13 The mortality reviews have always been of vital significance, and the Monitors
14 reported Defendants "missed critically important errors." (Doc. 4755 at 7.) The Monitors
15 stated they repeatedly brought the overuse of nurses and LPNs in violation of the Injunction
16 to the attention of Defendants, which in fact contributed to the cause of one patient's death.
17 But when this failure was brought to the attention of Defendants, they flatly responded that
18 it was a "one-off." (Doc. 4755 at 7.) As poor as the mortality reports were, the Monitors
19 found, "almost all other reviews . . . were worse."²⁹ (Doc. 4755 at 8.) Despite the
20 monitoring team having provided repeated feedback, there had not been systemic
21 improvements through the "implementation of a sustainable remedial plan as required by
22

23 ²⁹ The failures to correct mortality review reports is of great concern because when
24 deficiencies were brought to Defendants' attention by the Plaintiffs in March 2024,
25 Defendants first denied any problems, but also claimed they were aggressively making
26 improvements: "[Defendants'] Medical Director, Dr. Phillips, is currently in the process of
27 revamping the entire mortality review process to provide a greater transparency and
28 ownership regarding the care provided. [Defendants] will work with NaphCare to ensure
that the improved process is robust and thoughtful." (Doc. 4566 at 10.) The Court finds the
mortality reports reviewed by the Monitors do not support that a review process was
meaningfully completed.

1 the Injunction.” (*Id.* at 71)³⁰

2 The Monitors discovered medications had been maladministered, placing patients
3 at serious risk of harm. The poor mental health treatment included one patient who “spent
4 15 minutes banging his head on a wall” that required an emergency response. Again, the
5 fundamental underpinning of the Injunction for establishing a minimally safe mental health
6 system has been substantially unmet because of the use of nurses and LPNs as first line
7 healthcare, “over- and mis-use of telehealth” and the electronic health record was described
8 as a “sprawling, disorganized warehouse.”³¹ (*Id.* at 15.) Fundamental to the Injunction has
9 been Defendants’ failure to fill critical staff positions in that there continue to be a dearth
10 of physicians “medical APPs,” and “nurses,” and Defendants’ recruitment remains poor.

11 One of the most urgent concerns expressed by the Monitors was that Defendants
12 were still unable to accurately analyze Injunction-related data. The Monitors reported they
13 have spent “hundreds of hours” providing detailed feedback, orally and in writing, and
14 mentoring to Defendants regarding errors, analyses, and interpretation of the Injunction to
15 assist them in first understanding and then reaching compliance. In fact, Dr. Strick
16 specifically offered on more than one occasion to provide mentoring to nurses and others
17 “to no avail.” (Doc. 4755 at 96.) Initially after the Injunction, the Monitors reviewed
18 Defendants’ monthly reports and provided objections, comments, and instructions. The
19 Monitors would meet with Defendants to enhance improvements. Over time, the meetings
20 ceased because Defendants showed no interest in accepting advice from the Monitors.

21 ³⁰ The Monitors reported in December 2024 they alerted Defendants more than a year
22 earlier that the reports indicated significant medical equipment was available, but the
23 inspection showed it “was missing,” raising the possibility of “false documentation.”
24 (Doc.4755 at 9-10) Not until this same issue was raised again in the Monitors’ Third
25 Interim Report in August 2025 did Defendants provide any response. Their explanation,
26 while alleviating the concern regarding false documentation, raised the issue that
27 “emergency response bags are sealed without confirming that they are complete.” (Doc.
28 5040 at 11.)

³¹ The Monitoring Team in their evaluation “spent hours on individual patient records” to
understand what were the “conditions and treatment.” But even assuming a clinician would
be better informed than the Monitors, the Monitors were “unable to piece together”
necessary information that would allow for the safe care of a patient. (Doc. 4755 at 17.)

1 Finally, the Monitors expressed dismay about the leadership available in order to
 2 reach and maintain compliance with the Injunction. The primary reason was Defendants,
 3 through their leadership, maintain the system that embraces using nurses as the primary
 4 care givers supplemented by LPNs.³²

5 Defendants offered objections to the Monitors' report, and the Monitors provided a
 6 detailed response on October 4, 2025, (Doc. 5040), emphasizing the essence of the
 7 violations.³³ Defendants still contend "there is no problem" with nurses providing "most
 8 of the care" in clear violation of the foundation of the Injunction. In fact, the Monitors
 9 reported Defendants have failed abysmally, emphasizing the failure of Defendants to
 10 aggressively enforce the contract with NaphCare by refusing to impose any of the
 11 numerous potential sanctions available, which is inexcusable. In fact, few sanctions have
 12 been imposed against NaphCare for healthcare violations.

13 The Monitors reflected on Defendants' false claim that the Monitors, for the first
 14 time in the report, provided them a detailed and understandable review of the Injunction
 15 requirements and methodology, which is startling and absurd. The Monitors have given
 16 significant feedback, which has been ignored or refused by Defendants. Remarkably, only
 17 since the Motion for Receiver was filed have Defendants, for the first time, offered, through
 18 declarations, detailed, specific comments, criticisms, and complaints concerning each
 19 requirement of the Injunction, the Quality Indicators. Regarding Defendants' response
 20 concerning a hypertensive patient, the Monitors correctly concluded the healthcare
 21 management was still "dangerously inadequate." (Doc. 5040 at 3.) Regarding another
 22 patient's death, the excuse offered by Defendants only strengthened the Monitors'
 23 conclusion that the mortality review process has failed. Regarding Defendants' attempt to
 24 excuse other mortalities, the Monitors found they remain inexcusable because they involve

25 ³² The Monitors found that Defendants do not have and, more importantly, have no system-
 26 wide imminent plan to acquire the space necessary to provide constitutional healthcare.

27 ³³ For example, the Monitors addressed a correction to their calculation of backlogged
 28 appointments; Defendants were correct that the number of medical appointment backlogs
 is 61,479 rather than the initially reported 123,403, but the Monitors found this number
 still inexcusable and dangerous.

1 avoidable delays in care, care not consistent with required standards of care, failure to
 2 timely review tests, and gross mismanagement by nurses of a patient's condition. And
 3 concerning one particular patient identified by the Monitors: "If not for [Defendants']
 4 mismanagement of the patient . . . [the patient] likely would not have needed the elective
 5 surgery . . . from which he died." Finally, the Monitors stated, "the specific problems with
 6 clinical care that led to one patient's death had still not been analyzed and remedied." (*Id.*
 7 at 16.)

8 In conclusion, the Monitors stated Defendants' remarks do not change "our
 9 conclusion that [Defendants'] mortality review process is flawed," which was supported
 10 by the Monitors' analysis of "three . . . deaths in 2023 and 2024 associated with the *same*
 11 clinical mismanagement." (*Id.* at 17 (emphasis in original).)

12 On January 3, 2025, the Monitors submitted the final report on the Pilot, referencing
 13 the fundamental requirement of the Injunction set forth in section 1.17 that mandates a
 14 "Patient Centered Care Model," that was to be achieved by the Pilot. (Doc. 4761 at 1.) But
 15 the Monitors reported Defendants "disagreed in writing with each of these assumptions at
 16 various times throughout the Pilot." (*Id.* at 3.) Consequently, the Pilot failed: it was never
 17 fully implemented at either location and operated for only 8 days at one of two locations.
 18 (*Id.* at 3-4.)³⁴

19 On February 12, 2025, Plaintiffs filed the Motion for a Receiver. (Doc. 4795.)
 20 Defendants responded (Doc. 4818), and Plaintiffs replied. (Doc. 4878.) In combination
 21 with the Third Interim Report to the Court, the Monitors provided their response to the
 22 Motion (Doc. 4968.) On June 11, 2025, the Court ordered implementation of the Final
 23 Staffing Analysis and Plan (Doc. 4858) as modified by the Experts' Analysis of Parties'
 24 Responses to Staffing Analysis and Plan (Docs. 4900, 4916.)³⁵

25 ³⁴ The Monitors detailed repeated, direct violations of specific Court Orders without notice
 26 to them or the Court. In particular, the Pilot healthcare staff were to be permanent, but
 27 Defendants failed to ensure NaphCare complied with the requirements of the Pilot. (*See*,
 28 Doc. 4761 at 7.)

³⁵ Defendants appealed that Order on July 9, 2025 (Doc. 4935), which remains pending,
 but this Court's Order directing implementation has not been stayed.

On July 17, 2025, the Monitors filed their Third Interim Report (Doc. 4942; 4968 (revised)) and, on October 4, 2025, the Monitors filed their Analysis of Parties' Response to Monitors' Third Interim Report to Court (Doc. 5040.)

II. Plaintiffs' Motion to Appoint a Receiver

Plaintiffs argue that given the systemic constitutional violations from the inception of the Injunction to the current day, the lack of substantive progress, and Defendants' obvious inability to recognize and remediate their mistakes, the least intrusive means of assuring prisoners within Arizona prisons receive constitutionally adequate healthcare is to appoint a receiver. (Doc. 4795.)

In Response, Defendants claim they have continued "to make progress across all aspects of the Injunction," (Doc. 4818 at 2), and argue a receiver is premature because the Injunction has been in place for less than two years, the current director has only been in place for two years, there have been additions to the numbers of full time equivalent employees (FTEs), NaphCare has only been contracted for the past two years, and Defendants have expended additional funds on healthcare, have made some improvements on certain types of healthcare in certain facilities, and have had success in the opioid use disorder program and Hepatitis-C treatment. Finally, Defendants claim NaphCare "has steadily increased staffing since the start of the Injunction." (Doc. 4818 at 15.)

In Reply, Plaintiffs argue that Defendants' argument against a receiver boils down to a meritless request for more time based on declarations of alleged virtuous good intentions. Defendants admit their contractor has not met even the staffing requirements of the current contract and offer no plan to achieve the necessary enormous increases anticipated in the final statewide staffing plan. Finally, Plaintiffs maintain Defendants' anecdotal examples of improvements are overcome by the ongoing, substantial noncompliance with the Injunction allowing systemic unconstitutional violations to persist for over 10 years.

A. Legal Standard

1 “[A]ll prospective judicial relief (necessarily including the appointment of
 2 receivers) must be accompanied by findings that the relief is ‘narrowly drawn, extends no
 3 further than necessary to correct the violation of the Federal right, and is the least intrusive
 4 means necessary to correct the violation of the Federal right.’” *Plata v. Schwarzenegger*,
 5 603 F.3d 1088, 1095 (9th Cir. 2010.)

6 “Receiverships are recognized equitable tools available to the courts to remedy
 7 otherwise uncorrectable violations of the Constitution or laws.” *Id.* at 1093-94. A receiver
 8 is “appointed by the court to take over the day-to-day management of a prison system or a
 9 segment of it” “where unconstitutional conditions persist despite repeated orders to
 10 remediate.” *Id.* at 1094; *United States v. Hinds Cnty. Bd. of Supervisors*, 128 F.4th 616,
 11 636 (5th Cir. 2025) (A receivership appointment is an appropriate sanction when necessary
 12 to remedy a prison’s repeated failures to ensure constitutional prison conditions).

13 In determining whether appointment of a receiver is appropriate, the Court must
 14 consider (1) whether there is a grave and immediate threat or actuality of harm to plaintiffs;
 15 (2) whether the use of less extreme measures of remediation have been exhausted or would
 16 prove futile; (3) whether continued insistence on compliance with the Court’s orders would
 17 lead only to confrontation and delay; (4) whether there is a lack of leadership to turn the
 18 tide within a reasonable period of time; (5) whether there is bad faith *or* repeated failure to
 19 implement changes; (6) whether resources are being wasted; and (7) whether a receiver is
 20 likely to provide a relatively quick and efficient remedy. *Hinds Cnty.*, 128 F.4th at 637;
 21 *Plata v. Schwarzenegger*, No. C01-1351 TEH, 2005 WL 2932253, at *23 (N.D. Cal. Oct.
 22 3, 2005.) The district court should consider each factor, but “the first two . . . are given
 23 predominant weight.” *Plata*, 2005 WL 2932253 at *23.

24 **B. Discussion**

25 Ordering a receivership is a drastic remedy. The Court has sought and received
 26 extensive briefing and has carefully considered the law, arguments, and evidence presented
 27 by the parties and experts. The Court asked the Monitors to opine on Plaintiffs’ request that
 28 a receiver be appointed. The Monitors filed a 306-page report (Doc. 4968) chronicling

1 Defendants' failure to comply with the Injunction and enumerating the ongoing
2 unconstitutional medical care within the entire prison system, concluding: "The system
3 changes required by the Injunction to protect human life and limb and prevent suffering
4 are still broken." (Doc. 4968 at 5.) The Monitors posit this finding is brought to bear by the
5 reality that Defendants are "still struggling to identify and prioritize the changes [they]
6 need[] to make, let alone actually make those changes." (*Id.* at 5.)

7 Great weight has been placed on the factually well-supported, reliable opinions of
8 the Monitors. "[T]he most important question a court must consider when deciding whether
9 to appoint a neutral expert witness is whether doing so will promote accurate fact finding."
10 *Gordon v Todd*, 793 F. Supp.2d 1171, 1179 (E.D. Cal. 2011.) Here, the Court appointed
11 the Monitors as "its own experts to serve as neutral monitors to evaluate Defendants
12 performance" under the Injunction (Doc. 4410 at 6.) And it is impossible to exaggerate the
13 importance of Defendants' enthusiastic choice of the Monitors as revered experts, to assist
14 in first drafting the elements of the Injunction, and then to function as Monitors to ensure
15 Defendants' compliance. And it is particularly noteworthy that despite Dr. Stern's previous
16 criticisms of Defendants' healthcare when he testified in this case as a witness in 2018, the
17 Defendants nonetheless welcomed his selection as the Monitor. (Doc. 3921.)

18 The Injunction required Defendants to provide a monthly report on their compliance
19 with all elements of the Injunction that were then thoroughly analyzed by the Monitors to
20 determine Defendants' performance, and where Defendants specifically failed. As
21 discussed above, the Monitors offered lessons and suggestions for improvement. In the
22 beginning the Defendants were receptive to conversations and meetings with the Monitors,
23 but, after a few months, Defendants refused the Monitors' overtures and rejected or ignored
24 most of the Monitors' recommendations without providing explicit reasons. Now that the
25 appointment of a receiver looms large, Defendants have become highly critical of the
26 qualifications, expertise, and opinions of the Monitors, even proffering the astonishing
27 position that the Monitors' qualifications and opinions fall far short of the requirements of
28

1 Federal Rule of Evidence 702.³⁶ Either the Defendants are amnesic, or duplicitous, or both.
 2 The Monitors' reports are thorough, amply supported, and their reasoning is fully
 3 explained. Defendants' contentions to the contrary border on bad faith.

4
 5 ³⁶ Dr. Stern is a board-certified internist with 25 years' experience as a correctional
 6 physician in a variety of settings, including as a jail medical director, a regional medical
 7 director for a state DOC, a regional medical director for a for-profit prison health care
 8 vendor, and as assistant secretary/medical director for the Washington State Department of
 9 Corrections. He has provided consultation and assistance on correctional health care to a
 10 variety of organizations and agencies including DHS, USDOJ, Bureau of Justice Statistics,
 11 Bureau of Justice Assistance, National Institute of Corrections, California Attorney
 12 General, Human Rights Watch, ACLU National Prison Project, Federal courts, and the
 13 Namibian Correctional Service, and currently serves as medical advisor to the American
 Jail Association and National Sheriffs' Association. Dr. Stern also conducts research and
 teaches at the University of Washington School of Public Health, serves on the editorial
 board of the Journal of Correctional Medicine, and is past chair of the education
 committees of the American College of Correctional Physicians and the Academic
 Consortium on Criminal Justice Health.

14 Dr. Strick is board certified in Internal Medicine and Infectious Diseases with almost 20
 15 years' experience working in carceral settings. Her roles in the Washington State
 16 Department of Corrections have included Statewide Infectious Disease Physician, Chair of
 17 Infection Prevention, and Hepatitis C Director. She also established a reentry program to
 18 transition patients with HIV back to the community. She is the Carceral Director for the
 19 Mountain West AIDS Education & Training Center and travels throughout the 9-state
 20 Mountain West region to do education and technical assistance for carceral and community
 providers to improve the care of individuals in jails and prisons. Dr. Strick is also a Clinical
 Associate Professor at the University of Washington where she sees patients, conducts
 research, and teaches medical students and residents about the carceral healthcare system.

21 Dr. Abplanalp is a licensed clinical psychologist with over two decades of experience in
 22 carceral settings. He received his Ph.D. in Clinical Psychology from the University of
 23 Texas at Austin and completed postdoctoral forensic work at Court Diagnostic and
 24 Treatment Center in Toledo, Ohio and Dorothea Dix Forensic Hospital in Raleigh, North
 25 Carolina. He began working for the Washington State Department of Corrections as both
 26 a psychologist and clinical supervisor in 2001 and, in 2011, he became the first Chief
 27 Psychologist of the Department. During his tenure, he has worked as a clinician, supervisor,
 28 and educator and he developed the statewide curriculum for Suicide Prevention and Mental
 Illness, which he presented to health services, custody, and front-line staff in over 300
 trainings. In the wake of Hurricanes Maria and Irma in 2017, Dr. Abplanalp was deployed
 as part of an Emergency Management Assistance Compact to assist in rebuilding and
 fortifying the mental health infrastructure in the U.S. Virgin Islands. He has also served on

1 The substantial evidence in the record and the factors required to be established
2 strongly support granting the Motion for Receiver.

3 **1. Grave and Immediate Threat of Continuing Harm and Actuality**
4 **of Harm**

5 There can be no credible disagreement by Defendants that this litigation was
6 initiated because of a seriously inadequate healthcare system that imperiled the lives of the
7 prisoners. If not immediately apparent to Defendants at the outset of the case, Defendants
8 effectively conceded the healthcare was in need of substantial improvement because they
9 jointly stipulated in 2014 to comply with the numerous terms and requirements
10 (Performance Measures) of the Stipulated Agreement in response to Plaintiffs' compelling
11 allegations of unconstitutional healthcare. And those requirements were strikingly similar

12 the Crisis Negotiation Team, has been involved in high-risk extraditions with specialized
13 security teams, and is certified in performing Psychological Autopsies. Over the past
14 decade, Dr. Abplanalp has been intensely involved in the development, implementation,
15 monitoring, and improvement of a coordinated system of integrated mental health and
16 medical care within the Washington Department of Corrections and has worked as a
17 Correctional Mental Health Consultant in a variety of carceral settings, including prisons,
18 jails, community mental health agencies, and ICE detention centers. Dr. Abplanalp also
serves as the Mental Health Advisor on the Board of Directors of the American Jail
Association.

19 Dr. Rainer has been licensed in Washington State as a psychologist for 32 years. She has
20 worked 26 years as a correctional Psychologist in both direct care and leadership roles, to
21 include the Director of Behavioral Health and Chief of Psychology. She consults with
correctional agencies committed to improving the care delivered to incarcerated people.

22 Donna Strugar-Fritsch has more than 30 years of health care policy, administration,
23 program development, research and evaluation and clinical nursing experience. As a
24 consultant, she built a strong national consulting capacity in correctional health care over
25 more than 20 years, and is a nationally recognized expert in the interface of the Affordable
26 Care Act, Medicaid, and correctional settings; design and implementation of innovative
27 models for staffing and delivering correctional health care services; and comprehensive
28 addiction treatment including all FDA-approved forms of Medications for Addiction
Treatment in prisons and jails. She has a deep understanding of health care staffing and
operations in correctional health systems and has helped many prisons and jails improve
access to care and vendor contracting for correctional health services.

1 to the requirements of the Injunction, i.e., the Quality Indicators. But as early as 2016,
 2 Defendants largely failed to perform across all Performance Measures and those violations
 3 uncannily resemble the same violations of the Injunction.³⁷ Defendants resolutely denied
 4 violating the Stipulated Agreement, just as they now deny violating the Injunction. And
 5 Defendants' excuses in 2016 mirror the same excuses they offer in response to their
 6 violations of the Injunction.³⁸

7 The appalling healthcare conditions culminated in a two-week trial in 2021 where
 8 the dire threat of harm to prisoners was established. The Court found the healthcare
 9 "grossly inadequate" and held it "placed patients at a substantial risk of serious harm,"
 10 staffing was incompetent, and the poor treatment and indifference to patients was
 11 "pervasive," and in some cases inhumane. (Doc. 4335 at 19-20, 69.)³⁹

12 Instead of appealing, Defendants engaged with Plaintiffs, the Court, and the
 13 Monitors to devise an Injunction that would end "the unconstitutional substantial risk of
 14 serious harm to Plaintiffs." The Court declared because of Defendants' chronic defiance,
 15 the Injunction was Defendants' last resort to comply with the Constitution. (Doc. 4637 at
 16 8.) And to maximize success, strict adherence was mandated. The Court stated, "The
 17 Court's patience has run out," (*Id.*) and it is clear the Court "cannot impose an injunction
 18 that is even minutely ambiguous because Defendants have proven they will exploit any
 19 ambiguity to the maximum extent possible." (Doc. 4410 at 5). The Court demanded the
 20 "changes necessary to redress [Defendants'] failings be substantial." (Doc. 4410 at 4-5.)

21 ³⁷ Those failures then included deficiencies in prescription medication, the medical record
 22 system, reviewing medical records, diagnostic and chronic care visits, mortality reviews,
 23 and failures regarding overall delays in providing access to care.

24 ³⁸ Between 2016 and 2021, Defendants claimed they "barely missed compliance,"
 25 "noncompliance was based on a technical violation," violations were "due to third parties"
 26 "inaction or omissions," and Defendants claimed their overall compliance with the
 27 Stipulation was allegedly "77-94%." But the overall administration of healthcare was
 28 demonstrated in numerous hearings as extremely poor. (Doc. 3921 at 24.)

³⁹ "The Mortality reviews demonstrated that despite ten years of litigation, [Defendants
 have] never created . . . a policy to [find] systemic issues identified in mortality reviews
 and ha[ve] not taken steps to remedy them" and "this constitutes systemic, conscious
 disregard of the risk prisoners face." (Doc. 4335 at 3.)

1 Now almost three years after the effective date of the Injunction, Defendants have
 2 continuously violated the Injunction, perpetuating the same unconstitutional risk of grave
 3 harm to the prisoners that has persisted since the outset of the litigation.

4 The Monitors expressly found Defendants were non-compliant with 131 of 154
 5 Quality Indicators relating to healthcare.⁴⁰ Corroborating the Monitors' opinions,
 6 Plaintiffs' investigators analyzed Defendants' self-compliance using their database, based
 7 on a recent two-month sample (December 2024 and January 2025), that substantiates the
 8 Monitors' compliance findings and methodology. (Doc. 4838.) And using Defendants'
 9 database, Plaintiffs' investigator found substantial support for the Monitors' conclusions
 10 and methodology regarding the percentage of Defendants' compliance. (*Id.*)

11 Defendants admit violating a number of the Quality Indicators, and, for many where
 12 they differ with the Monitor's findings of violations, Defendants often (a) acknowledge the
 13 Monitors may be correct; or (b) commit to investigate to determine if the Monitors are
 14 correct; or (c) claim it is impossible to comprehend what the Monitors contend, despite that
 15 the Quality Indicators were drafted by the Defendants and have been in existence since
 16 2023; or (d) assert the objectives and problems identified by the Monitors will likely be
 17 resolved when the PCCM required by the Injunction is finally established, which is
 18 unimaginable because Defendants are nowhere close to attaining it; or (e) commit to
 19 continuing resolving issues with NaphCare.⁴¹

20 ⁴⁰ The Court relies on the Monitors' Third Interim Report for the number of Quality
 21 Indicators. (Doc. 4968.)

22 ⁴¹ Defendants filed the Declaration of Micaela McLane, Director of Nursing, who has been
 23 assigned since April 2025, and who has the lead responsibility to ensure monthly Quality
 24 Indicator assessments align with all requirements and to recommend improvements, and
 the Declaration of Raymonda Matheka, who has been the Mental Health Director since
 2024. Some examples of their comments in their declarations include:

25 § 1.1 Medical acknowledges Monitors "disagreement of selection of cases and
 commits to following up with physicians responsible for the assessments."

26 § 1.1(f) Regarding Monitors' findings that Defendants continue to use favored
 27 samples, Defendants "will determine if functionality can be improved and discuss
 issues with physician reviewed."

28 § 1.22 Acknowledge Monitors' report says tests are not performed because of
 transportation issues. Defendants will "follow up" and this is a "priority project."

1 The Court finds the overwhelming evidence establishes Defendants are in violation
2 of the Injunction perpetuating the grave and immediate threat of actual harm to prisoners.

3 The Monitors, in reaching their analysis, used information from a variety of sources.
4 Pursuant to the Injunction, the Monitors were given substantial authority to investigate,
5 evaluate, and verify compliance through access to the electronic health records, conducting
6 visits, and analyzing the data collected by Defendants and their agents. The Monitors were
7 permitted to use information from a variety of sources, including interviews of prisoners,
8 Defendants' staff and contractors, complaints from prisoners and all other persons,
9 Plaintiffs' counsel, random or purposive view of health records, clinical observations, site
10 visits, papers, and videos. And Defendants were mandated to cooperate with the Monitors
11 in data collection.

12
13 § 1.22(d) Defendants acknowledge the error that offsite referrals have included
14 those not completed and "will improve this."

15 § 1.21(a) Defendants acknowledge Monitors' report questions the number of
16 refusals and claims Defendants are "reviewing the process" and will "look whether
17 improvements are feasible."

18 § 7.4.7 Defendants recognize assessments of the Patient Center Care Model "has
19 not captured all of the issues encompassed in the Quality Indicators," particularly
20 the "role of PCCM."

21 § 11.16 (testing and treatment) Defendants promise to collaborate to improve the
22 testing.

23 § 2.4.1 Regarding mental health: Significant work has been completed very recently
24 in 2025 that "may address Monitors' concerns."

25 § 6.2 and § 7.3, which criticize failure to assign a mental health therapist:
26 Defendants state the "issue may change when PCCM is implemented."

27 § 1.1 Regarding necessary Tech Care modifications, Defendants promise they "will
28 work with NaphCare."

§ 1.1(b) Regarding urgent care and whether Defendants have not collected required
data, Defendants admit they have "not successfully implemented the methodology
to date and it is a priority."

§ 1.21(a) Regarding suicide prevention Defendants state they are "addressing the
issue and anticipate improvements."

§ 3.4 Language interpretation: Defendants admit it "needs improvement."

§ 16.3.1 Comprehensive mental health evaluation "to the extent the Monitors are
correct that the assessments are relying on initial assessment . . . rather than more
comprehensive evaluations their criticism is well taken."

1 Apart from establishing serious non-compliance, the Monitors identify the
 2 substantive effects of non-compliance. Attached is a chart demonstrating where
 3 Defendants are non-compliant based on the Monitors' reliable assessments.ⁱ

4 The Monitors determined Defendants were non-compliant with the core of the
 5 Injunction at sections 1.1 and 1.3, which "describe the backbone of any health care
 6 system," and are inextricably included in the Injunction. *Id.* at 45-47. Section 1.1 requires
 7 all healthcare and documentation thereof be clinically appropriate, "including, where
 8 relevant to the circumstance and professional's credential, but not limited to, the
 9 conducting of the history and physical examination, forming and testing a differential
 10 diagnosis, arriving at a diagnosis, and ordering treatment for that diagnosis." (Doc. 4410
 11 at 11.) Section 1.3 provides "all prisoners with physical or mental illness that require
 12 regular follow-up shall be designated on the medical or mental health caseload and shall
 13 be seen in clinically appropriate timeframes." (*Id.*) Care that is non-compliant with these
 14 provisions "by definition places patients at significant risk of serious harm." (Doc. 4968 at
 15 45-47.)⁴²

16 The Monitors noted, according to the most recent contract with NaphCare,
 17 Defendants were required to have 18.8 full-time employee staff physicians and 9.0 full-
 18 time employed medical directors, for a total of 27.8 full-time employed physicians. (Doc.
 19 4968 at 27.) Defendants' reporting and response to the Motion for Receiver demonstrate

20 ⁴² See Doc. 4968 at 48 (Defendants self-assess 96% compliance with urgent care provision
 21 in sub provisions 1.1b of Injunction, but Monitors assess as closer to 33%); *id.* at 49
 22 (Defendants self-assess 79% compliance with non-urgent, episodic care in subprovision
 23 1.1c of Injunction, but Monitors calculate 35% compliance); (*id.* at 52 (Defendants self-
 24 assess 86% compliance with chronic care provision in section 1.1d of Injunction, but
 25 Monitors assess closer to 35%); *id.* at 53-57 (Monitors assess noncompliance with inpatient
 26 care provision in 1.1e, but find percentage is inappropriate methodology); *id.* at 58-59
 27 (Monitors assess non-compliance with off-site specialty referrals provision in section 1.1f
 28 of Injunction and that percentages do not fully capture methodology, Defendants self-
 assess at 96% compliance, but Monitors assess 65% compliance.); *id.* at 60 (Defendants
 self-assess 84% compliance with 1.1g of Injunction regarding action taken on post-
 hospital, post-emergency room, or specialist recommendations and that percentages do not
 fully capture methodology, Defendants self-assess at 96% compliance, but Monitors assess
 10% compliance).

1 an inability to recognize their own failures and incompetence. Defendants have what they
 2 consider to be 11.5 FTE staff physicians positions filled by 18 physicians (approximately
 3 61% filled), but only 11 of those physicians are board certified or board eligible as required
 4 by the Injunction. (*Id.*)⁴³ Likewise, although Defendants contend all 9 of the medical
 5 director positions are filled, because only 6 of the 9 physicians are board certified or board
 6 eligible, only 66% are actually filled. (*Id.*) And Defendants claim NaphCare is offering
 7 competitive salaries, but this is wrong. The Monitors correctly found the increase is
 8 “woefully insufficient,”⁴⁴ and continues despite the constant entreaties by the Court in the
 9 presence of the Director and his staff that this must be immediately cured. (*Id.* at 28, 273.)⁴⁵

10 And it cannot be overemphasized that Defendants have been frequently told by the
 11 Court that their incompetent and inadequate staffing of healthcare is unconstitutional.
 12 When the case was filed, the Class certification order “identified longstanding staffing
 13 deficiencies.” Then in May 2017, Magistrate Judge Duncan found a “a mere seven staff
 14 physicians and five psychiatrists for the entire ADC prisoner population” was seriously
 15 inadequate. Concomitantly, Defendants heard the shocking testimony of Defendant
 16 Richard Pratt, Interim Director of the Health Services Division, expressing the flagrant
 17 indifference of Corizon, the then-contractor, that: “[The contractor] may well have decided
 18 to pay a fine rather than fill staff positions.” (Doc. 2071 at 85.) Then during the two-week

19 ⁴³ These numbers have changed slightly while the Motion has been pending, but the
 20 underlying issue remains. (*See, e.g.*, Doc. 5040 at 3 (Monitors assert that “Defendants
 21 report that they currently engage 15.3 FTE staff physicians. In fact they only engage no
 22 more than 11 FTE. Second, Defendants focus on informing the Court where they are
 23 compared to where they were. We believe that the focus should be on where they are
 24 compared to where they should be. It is this latter comparison which is much more
 25 determinative of patient safety and led us to the conclusion that staffing remains
 26 dangerously inadequate.”)).

25 ⁴⁴ The Monitors state “based on [their] experience, employers must pay a premium to
 26 attract health care professionals to work in a prison” and point out that the software used
 27 to evaluate NaphCare’s salaries cannot distinguish prison-based from community work
 28 settings or on-site from remote employment, and likely has little comparative data for the
 remote locations where ADCRR prisons are situated.

⁴⁵ The Director attended all hearings in 2023-2024 where the Court brought poor staffing
 to his specific attention.

trial in 2022, Defendants effectively agreed their current staffing levels were insufficient, and acknowledged their then-contractor, Centurion, admitted that “if [the contractually required] staffing levels could be obtained,” it “would be insufficient” to meet healthcare standards. (Doc. 4335 at 22.) Finally, only three months after the effective date of the Injunction, the Court was compelled to order Defendants to immediately hire new staff because they were already in violation of the Injunction, but Defendants failed to comply with the Court’s order. For Defendants to now suggest they be absolved of their staffing violations and even exalted with praise because today only 100 contract positions remain unfilled is preposterous and sustains that they are oblivious to their constitutional obligations.

The Monitors documented critical deficiencies in implementing the Injunction requirements relating to patient refusals and informed consent despite the Monitors’ feedback on making relatively simple changes to the refusal process and documentation. (Doc. 4968 at 29-35.) The Monitors’ investigation found these failures have resulted in dangerously misinformed refusals of treatment. (*See id.*)

Defendants, despite the Monitors’ findings, claim there is no grave and immediate threat, or actuality of harm to the Plaintiff class. In making this assertion, they challenge the Monitors’ methodologies and state they have a “difference of opinion” of what is appropriate prison healthcare, without offering a scientifically valid basis. And Defendants suggest that meeting a high percentage of the Quality Indicators is sufficient compliance. But it is unimaginable Defendants would disagree that delivery of clinically required healthcare in prison often presents emergencies and life and death situations for which a percentage of compliance is consistently inadequate.⁴⁶

⁴⁶ For the most recent publication by the Bureau of Justice Statistics on inmate medical and mental health problems, *see* Laura M. Maruschak, Jennifer Bronson & Mariel Alper, *Survey of Prison Inmates: 2016: Medical Problems Reported by Prisoners* (2021) and Laura M. Maruschak, Jennifer Bronson & Mariel Alper, *Survey of Prison Inmates: 2016: Indicators of Mental Health Problems Reported by Prisoners* (2021); *see also* Jill Curran, Brendan Saloner, Tyler N.A. Winkelman & G. Caleb Alexander, *Estimated Use of Prescription Medications among Individuals Incarcerated in Jails and State Prisons in the US*, JAMA Health Forum (Apr. 14, 2023), doi:10.1001/jamahealthforum.2023.0482.

Moreover, the model of care established by the Injunction with all Quality Indicators, after months of negotiations, was jointly drafted by the Court, Defendants, Plaintiffs, and the Monitors. It was to be strictly enforced by the Court. (Doc. 4637 at 8.) Accordingly, nowhere in the language of the Injunction, or the Court’s approval of it, is there the slightest implication that partial compliance, *i.e.*, a percentage, would be tolerated. And describing the Monitors’ findings and analysis, which are supported by voluminous evidence, as a “difference of opinion” does not overcome their factually reliable evaluations and conclusions.⁴⁷

Consistent with the Court’s 2022 Findings (Doc. 4335), these violations were not then, and are not now, abstract. They are brought to life—or death—by the individuals who experienced profound delays in receiving treatment or who failed to receive treatment at all. The Findings included evaluations of fourteen mortality reviews that highlighted the deficiencies in the care the prisoners received. Those mortality reviews were appalling in their illustration of the callous, inhumane indifference displayed on a regular basis. But more than that, the Findings revealed not just that the care received was shocking but, in many instances, Defendants demonstrated they did not believe the care was in any way deficient. And it is this belief of Defendants that creates the catastrophic risk of harm to Plaintiffs.

The Court’s finding that Defendants are in violation of the Injunction establishes a grave and immediate threat of harm to prisoners, but the same threat of harm is also independently manifested by the eight deaths reported in the mortality reports occurring in 2023 and 2025. Moreover, the grave continuing harm to the prisoners is separately demonstrated by the Monitors’ identification in the 300-page report of numerous recent incidents of Defendants’ maladministration of medical care, including inhumane treatment.

The Monitors evaluated Defendants’ four most recent deaths (as of the date their report was drafted) and compared those deaths to Defendants’ first four deaths following

⁴⁷ Again, it is inexcusable for Defendants to now falsely claim the Monitors, for the first time, provided them with “a detailed review of the healthcare Injunction requirements . . . for determining compliance and a critique of [Defendants’] performance.”

1 issuance of the Injunction. The Monitors believe this comparison sheds light on whether
 2 progress has been made in the delivery of constitutional healthcare and whether Defendants
 3 have implemented the critically necessary self-review process required both by the
 4 Injunction and as necessary to identify problems and correct them so they do not recur.

5 The relevant facts are below and establish the prisoners experienced “a lack of
 6 timely access to appropriate care by the appropriately skilled professionals.” (Doc. 4335 at
 7 30.)⁴⁸

8 **a. Death 1**

9 Patient 20 died on March 24, 2025 at the age of 78. He had a history of multiple
 10 stroke and seizure disorder (in addition to other serious issues.) He was seen by a
 11 neurologist on July 11, 2023, and was prescribed an antiseizure medication that improved
 12 his seizures. But on February 20, 2025, the Facility Medical Director saw Patient 20 and
 13 discontinued his seizure medication. The provider failed to review Patient 20’s medical
 14 history because, if he had, the provider would have immediately identified Patient 20 had
 15 an ongoing seizure disorder. Two weeks after discontinuation of the medication, Patient 20
 16 suffered a prolonged seizure requiring intubation and placement in the hospital intensive
 17 care unit. He eventually returned to the prison, and died four days later.

18 The Monitors acknowledged his co-morbidities contributed to his death, but the
 19 critical failure to review Patient 20’s medical history and his removal from antiseizure
 20 medication “hastened his death” and the Monitors also noted numerous other deficiencies
 21 in Patient 20’s care. Yet, Defendants’ own mortality review “did not identify a single error
 22 nor any room for improvement.” (Doc. 4968 at 8.)

23 **b. Death 2**

24
 25 ⁴⁸ The Monitors outlined their analysis of the eight patients. (Doc. 4968.) In their response,
 26 Defendants submitted the declaration of Dr. Embrey, the Corporate Medical Director for
 27 NaphCare, who disputed some of the Monitors’ factual assertions regarding the patients’
 28 care. (Doc. 4973, Ex. 12.) The Monitors then submitted a supplemental response to
 Defendants’ response. (Doc. 5040.) In relevant factual recitations, the comments and
 disagreements from Dr. Embrey and the Monitors’ responses are included where relevant.

1 Patient 21 was a 78-year-old male who also died on March 24, 2025. He had a
 2 history of cardiac issues, including high blood pressure, high cholesterol, and a cardiac
 3 arrhythmia. On February 9, 2025, he suffered a heart attack that required placement of a
 4 stent in his main coronary artery.

5 The Monitors “identified several issues of grave concern regarding Defendants’
 6 management of his condition upon return from the hospital.” Specifically, Patient 21 was
 7 prescribed two new blood thinners and was instructed to discontinue his aspirin as the
 8 combination of the medications “greatly increases the risk of serious if not fatal bleeding.”
 9 Yet Patient 21 continued to receive aspirin for an additional 10 days. Second, Patient 21
 10 was referred for a specialty consultation with a cardiologist within one week (by February
 11 21.) It was not scheduled to occur until April 17, at which time Patient 21 had been dead
 12 for nearly one month. Finally, Patient 21 experienced a hypertensive emergency, which
 13 requires emergent treatment, but that treatment was “inappropriately managed at the
 14 facility.” By March 7, Patient 21’s blood pressure had increased to 200/86, which,
 15 according to the Monitors, required emergency intervention. Instead, he was “seen on
 16 March 8 by an RN, acting independently, who failed to recognize the urgency of the
 17 situation.”

18 Despite the serious errors in Patient 21’s care, Defendants’ mortality review “did
 19 not identify a single error nor any room for improvement.” (Doc. 4968 at 9.)

20 **c. Death 3**

21 Patient 22 was a 48-year-old male who died on March 12, 2025. He developed lung
 22 cancer, which was not diagnosed until it metastasized to the brain.

23 Patient 22’s friend “was so concerned about the patient’s health that he accompanied
 24 him to medical to help advocate for him to get urgent help.” The friend communicated the
 25 symptoms to the nurse, that his symptoms were urgent, and that Patient 22 said he did not
 26 know how to communicate his symptoms on his own. When Patient 22’s friend mentioned
 27 a possible mental health issue, the nurse—despite that Patient 22 was not on the mental
 28 health caseload—scheduled Patient 22 for a mental health follow-up. The Monitors

1 identify this as a “serious error” because the Permanent Injunction explicitly states patients
2 not on the mental health caseload are required to see a medical provider before placement
3 on the mental health caseload. The reasoning is straightforward: patients experiencing
4 clinical symptoms who do not have a mental health diagnosis are frequently experiencing
5 a physical condition. And here, the change in behavior experienced by Patient 22 was the
6 result of metastatic brain lesions.

7 Thereafter, on January 16, medical staff witnessed Patient 22 experience urinary
8 incontinence. The Monitors point out, this symptom in a 48-year-old male with no history
9 of incontinence is alarming and suggestive of “a brain lesion or spinal cord damage
10 requiring emergent treatment.” Instead, the symptom was ignored and Patient 22’s physical
11 exam was deemed normal.

12 Patient 22 then received the appointment with the psychiatric provider, who
13 diagnosed Patient 22 as experiencing “recurrent major depressive disorder” and
14 “adjustment disorder” despite having had no mental health history and no new
15 circumstances to which he was adjusting. The Monitors found both diagnoses were
16 “nonsensical.” The provider also attributed Patient 22’s incontinence to his depression. The
17 Monitors explained even if Patient 22’s incontinence were attributable to a mental health
18 condition (that he did not have), it “would be such an extreme symptom of depression that
19 it should have resulted in immediate admission to a MH Inpatient Unit.” But, instead, the
20 practitioner gave Patient 22 an antidepressant.

21 Thereafter, while in the hospital, Patient 22 was diagnosed with metastatic lung
22 cancer and had one brain lesion surgically resected. He was discharged back to the facility.
23 Patient 22 was seen by a radiation oncologist on February 11, 2025, and additional imaging
24 was ordered to prepare for ablative radiation to his brain metastases. The imaging done on
25 March 10 revealed a “critical situation”: patient 22’s brain was swelling and was “about to
26 destroy the brainstem.” At that point, Patient 22’s vital signs were “very abnormal,”
27 including a rapid heart rate of 120. The radiologist documented that the radiologist’s
28 “critical results team[]” attempted to notify Defendants by phone of Patient 22’s status but

1 despite seven attempts, none were successful. According to the Monitors, Patient 22 needed
2 emergency surgery—i.e. “within minutes to hours.” And the “clinical results team” sent a
3 fax to Defendants, which was reviewed, but Defendants took no action that day or the next
4 day. They took no action until March 12, when “there was clinical evidence of actual
5 herniation of the brain.”

6 Despite the errors in Patient 22’s care prior to his death, Defendants’ mortality
7 review “did not identify a single error nor any room for improvement.” (Doc. 4968 at 10.)

8 **d. Death 4**

9 Patient 23 was a 35-year-old male who died on March 21, 2025. Patient 23 had a
10 history of bipolar disorder. The Monitors “identified several issues of grave concern
11 regarding [Defendants’] management of his case.” Patient 23 was seen by a nurse (acting
12 independently) on February 12 for a cough and sore throat that lasted for four days. Patient
13 23’s oxygen was low—93%—but the nurse ignored it. The nurse also did not do any testing
14 or arrange for follow-up.

15 The Monitors explain Patient 23 was “brewing the infection or infections that would
16 lead to his death [And] [h]ad the patient been seen by a competent practitioner at this
17 point, his death would likely have been prevented.” Instead, the nurse ordered over-the-
18 counter medication and nothing else.

19 Patient 23 was seen again by a nurse (acting independently) on February 18. Patient
20 23 declined a physical exam, and he was not referred to a provider. Thereafter, on February
21 21, when seen at his cell-front for medication distribution, he was found in “acute
22 respiratory distress.” His cellmate reported Patient 23 had been “very ill for 3 to 4 days.”
23 Patient 23 “was pale, ‘almost gray,’ and his heart rate was fast (pulse 117.)” Patient 23’s
24 pulse oxygen was 45%; the Monitors explain levels below 75-80% are considered
25 “critically low.” The Monitors opine Patient 23 required “immediate evacuation to the
26 hospital.” But Patient 23 was sent to the medical clinic. Patient 23 died in the hospital of
27 severe pneumonia. The Monitors conclude the “nine-day delay in the patient receiving
28 appropriate care from Defendants for a brewing pneumonia erased any chance he had to

1 survive the infection.”

2 Again, despite the errors in Patient 23’s (a 35-year-old) care, Defendants’ mortality
3 review “did not identify a single error nor any room for improvement.” (Doc. 4968 at 10.)

4 **e. Death 5**

5 Patient 24 was a 48-year-old male who died on July 10, 2023 from pneumonia. The
6 Monitors identified “at least two significant errors in this patient’s care.” The first was
7 Defendants’ failure to offer an influenza vaccination, in violation of section 11.4 of the
8 Permanent Injunction. Because “at least a third of severe cases of influenza can be
9 prevented by vaccination, failure to provide vaccination likely contributed to his death.”

10 The second failure was Patient 24 was evaluated by a nurse acting independently on
11 July 6, 2023. The Monitors further opine that if Patient 24 had been evaluated by a
12 competent practitioner, his death might have been avoidable.

13 Despite these two errors, Defendants did not identify any errors or opportunities for
14 improvement. (Doc. 4968 at 12.)

15 **f. Death 6**

16 Patient 25 was a 60-year-old male who died on July 23, 2023 from metastatic liver
17 cancer as a result of end stage liver failure due to hepatitis C and alcohol abuse. The
18 Monitors identified at least three significant failures in Patient 25’s care.

19 Despite a history of cirrhosis of the liver, Patient 25 was not appropriately screened
20 for liver cancer. The second error occurred when a provider that saw Patient 25 on July 12,
21 2023 inappropriately referred him for an urgent paracentesis (procedure to remove excess
22 fluid) without doing necessary laboratory testing first. This is dangerous according to the
23 Monitors because of the risks associated with paracentesis without attempting to eliminate
24 fluid in the abdomen through other means. Finally, the paracentesis was ordered on July
25 12, 2023 as “urgent,” meaning it needed to take place within one month. But the electronic
26 health record reflected it was not scheduled to take place until December 4, 2024, almost
27 18-months later and long after Patient 25 died. This erroneous entry reflected a software
28 error when the original request was cancelled because Patient 25 died.

1 Defendants did not identify any errors in Patient 25's care. (Doc. 4968 at 12-13.)

2 **g. Death 7**

3 Patient 28 was a 69-year-old male who died on July 29, 2023 from a perforated
4 stomach ulcer. The Monitors identified at least four significant errors in Patient 28's care.

5 Patient 28's platelet count was noted to be low (112,000; normal range is 150,000-
6 450,000) on May 17, 2023. A low platelet count can result in bleeding and is concerning
7 because of the possibility of serious disease. The Monitors noted that because there was
8 nothing in Patient 28's electronic health record to explain this low platelet count, a workup
9 should have been conducted to determine the cause, but it was not. Patient 28 did have
10 repeat lab work on June 23, 2023. The low platelet count was still present, and in addition,
11 Patient 28 was now anemic; his hematocrit dropped from 43 to 35.8 in approximately one
12 month. According to the Monitors this "would raise concern the patient had internal
13 bleeding." Moreover, the June 23 test results should have been reviewed within four days
14 but were not reviewed until July 7, in violation of section 4.4 of the Permanent Injunction.

15 On the evening of July 4, 2023, Patient 28 was brought to the medical unit by
16 custody staff. He presented with "low blood pressure, fast heart rate, fever, and low oxygen
17 levels." He was sent to the hospital and discovered to have internal bleeding from a stomach
18 ulcer. He underwent emergency surgery but did not recover. The Monitors also discovered
19 that, starting in October 2022, Patient 28 was prescribed naproxen twice daily. Patient 28
20 had low platelets and cirrhosis, which means NSAIDs (like naproxen) are contraindicated
21 unless absolutely necessary.

22 Defendants did not identify the first two errors but did identify the third. Their
23 recommendation was that "patients with risk factors for gastrointestinal bleeding (e.g.,
24 cirrhosis and low platelets) should only be prescribed chronic NSAIDs when other
25 treatment options have been explored and the patient has been provided with education
26 about the risks and benefits of treatment. When chronic NSAIDs are prescribed, then
27 appropriate treatment with gastro-protective medications (e.g., proton pump inhibitors)
28 should be utilized." But the Monitors pointed out that Defendants did not take any action

1 with this recommendation; i.e. “analyze why the error occurred,” “incorporate addressing
2 of the error into the statewide improvement plan, and if remediation is called for, develop
3 and execute an effective and sustainable remediation plan. Instead, their remediation plan
4 amounted to just wishful thinking.” (Doc. 4968 at 13-14.)

5 **h. Death 8**

6 Patient 29 was a 40-year-old male who died on July 30, 2023, from complications
7 following surgery for a bowel perforation due to diverticulitis. Patient 29 was seen in the
8 medical unit five times (four times by a nurse and one time by an advanced practice
9 provider) for abdominal symptoms that began on December 29, 2022, including “severe
10 abdominal pain, nausea, vomiting, and blood in the stool.” No practitioner physically
11 examined Patient 29 until January 3, 2023, and it was not until the afternoon of January 4,
12 “after seven days of suffering severe abdominal pain that [Defendants] failed to control,
13 that [Defendants] finally sent [Patient 29] to the hospital.” Upon arrival at the hospital,
14 Patient 29 had a perforated colon and surgery was performed immediately.

15 The Monitors opine that Patient 29’s colon perforated hours or days before he was
16 sent to the hospital, thereby greatly increasing the risk that surgery was not successful. This
17 is on top of Defendants’ failure to treat the severe pain Patient 29 experienced.

18 Defendants identified two errors in Patient 29’s care: that severe abdominal pain
19 should be escalated to a higher level of care and NSAIDs should be used cautiously in
20 patients in a high risk of bleeding. But, like Patient 28, Defendants did not take any action
21 with respect to the identified errors. And the Monitors determined three subsequent deaths
22 contained the same recommendation regarding escalation of care for prisoners
23 experiencing severe abdominal pain, thereby “highlighting that the issue had not been
24 adequately addressed.” (Doc. 4968 at 14-15.)

25 **i. Conclusions from Recent Mortality Reviews**

26 In the Court’s 2022 Findings of Fact following the trial (Doc. 4335), the Court
27 concluded from the mortality reviews:

28 The mortality reviews illustrate the harm that routinely befalls prisoners

1 because they do not receive timely and adequate health care. The common
 2 theme is nurses repeatedly are unable to properly diagnose health care issues
 3 and fail to refer prisoners to a provider.

4 ***

5 The deaths outlined above, some very recent, were not aberrations or
 6 corrective action would have been implemented. No such evidence was
 7 introduced because it does not exist. Defendants' failure to take any action
 8 in response to such obvious deficiencies up to the date of trial is evidence
 9 Defendants are content to continue using nurses

10 ***

11 Using nurses as the first line, and often last line, for providing care is
 12 medically unacceptable. While using nurses in this way is driven by a lack
 13 of higher-level staffing, that does not excuse Defendants from adopting a
 14 system that leads to preventable deaths.

15 (Doc. 4335 at 41-44.)

16 The Monitors' reviews of the deaths in 2023 and 2025 show not only has that
 17 practice continued unabated but, when performing mortality reviews, Defendants continue
 18 to fail to identify serious failures or take any action to prevent their recurrence. Moreover,
 19 Defendants have shown a complete inability or unwillingness, or both, to recognize and
 20 correct their failures, exacerbating the grave and continuing threat of harm and actual harm
 21 suffered by inmates. Further, it is important to note that in contrast to the numerous
 22 mortality reports presented as evidence at the 2021 trial, which were some of the most
 23 egregious examples of failures, the Monitors restricted their selection to a very few in 2023
 24 and 2025. Notably, however, all eight selected demonstrated poor analysis and review. And
 25 it deserves repeating, Defendants represented to the Court in March 2024 that Dr. Phillips
 26 intended to "aggressively make improvements in the mortality reports." (*See, supra*,
 27 footnote 29.) Clearly Dr. Phillips was unsuccessful as four of the deaths reported in the
 28 Monitors' recent analysis occurred in 2025.⁴⁹

⁴⁹ Defendants, in response to the Motion for Receiver, noted that the Mortality Review Committee has very recently made "several recommendations for corrective action" of poor treatment of patients, which is painfully overdue. (*See* Doc. 4973 at 15.)

1 In addition, the Monitors have pinpointed systemic failures that directly violate the
 2 Injunction and place prisoners at grave risk of imminent harm.⁵⁰ In evaluating whether
 3 prisoners are given enough information for informed refusals of medical care, the Monitors
 4 found common situations where prisoners' refusals were not informed in violation of the
 5 Injunction. This was exemplified by Patient 33, who decided to stop his medication to treat
 6 his opiate use disorder after an 11 *second* interaction with an LPN at his cell front in April
 7 2025. (Doc. 4968 at 30.) The Monitors concluded there was no chance Patient 33 could
 8 have been informed of the serious harmful consequences of discontinuing medication for
 9 opiate use disorder during the 11-second interaction. Similarly, Patient 43 had a chronic
 10 care visit scheduled for April 30, 2025, but because he incorrectly believed he no longer
 11 had hepatitis-C, he signed a blank refusal form that was slipped under his cell door, which
 12 he signed at 10:07 a.m.; a medical assistant signed the document in the space under the
 13 patient's signature 53 minutes later *falsely* indicating that they were present to obtain the
 14 refusal from the patient, but at no point within the 3-day window required by the Injunction
 15 did any practitioner meet with Patient 43 to explain to him that he still had hepatitis-C or
 16 the consequence of refusing his visit for hepatitis-C treatment. (*Id.* at 31.)

17 Additionally, Patient 34 had an off-site appointment scheduled with a
 18 gastroenterologist on April 23, 2025 for a colonoscopy due to his familial history of colon
 19 cancer; Patient 34 was not told why he was being sent to a "stomach doctor" and when he
 20 refused the appointment, a nurse spent 15 *seconds* at his cell administering medication and
 21 the Monitors concluded she could not have obtained informed consent for the refusal while
 22 administering medication in that short period of time. (*Id.* at 33.) The refusal form was again
 23 signed 5 hours later by a medical assistant *falsely* indicating that the assistant was present
 24 to obtain refusal from the patient. (*Id.*)

25 In August 2024, Patient 37 reported to the Monitors that refusals are sometimes just

26
 27 ⁵⁰ Although the Court highlights some examples here, the Monitors have documented
 28 numerous examples of violations of the Injunction and the serious risks of harm posed to
 prisoners as a result of the noncompliance, as set forth in their Reports, in addition to their
 statistical analysis of non-compliance with the Injunction.

1 based on “word of mouth” from officers. (*Id.* at 34.) Patient 60 submitted an HNR on
2 February 3 stating, “I recently fell from the top bunk directly on to my back. Not only was
3 the wind completely knocked out of me, but I also may have dislocated a rib as I can’t
4 hardly move left to right, up & down. Struggling to climb to bunk.” Though the patient
5 only submitted one request, there are 3 separate entries closing out this request in the
6 patient’s EHR on February 7, two indicating that the appointment was cancelled and one
7 that it was refused, but there is no evidence that he actually refused or that any health care
8 staff member had a direct interaction with the patient to confirm he no longer needed to be
9 seen. (*Id.* at 74.)

10 Patient 61 had an appointment to see a practitioner as a follow-up to a visit with an
11 orthopedic surgeon who recommended the patient have surgery to repair a torn ligament in
12 his knee. There is a document with the word “refusal” executed by a medical assistant who
13 somehow heard from a correctional officer that the patient “did not want to come to
14 medical.” His visit was cancelled in direct violation of Injunction provision 1.21b. (*Id.* at
15 75.)

16 Patient 62 was referred to see a cardiologist on February 12, 2025 due to an
17 abnormal EKG that raised concerns that he might have blockages of arteries in his heart.
18 A refusal form indicates that the patient is refusing a “med run” with the reason given,
19 “don’t need it” and was signed by an LPN. The refusal does not address cardiology, but
20 the referral to the cardiologist was cancelled by an unidentified person without explanation
21 and without rescheduling in direct violation of Injunction provision 1.21c. (*Id.* at 76.)

22 Likewise, in evaluating whether emergent and urgent care is given in compliance
23 with the Injunction, the Monitors noted examples of seriously deficient emergent and
24 urgent care, in violation of the Injunction posing an obvious risk to the prisoner’s health
25 and safety.

26 Patient 44 has a history of coronary heart disease, high cholesterol, asthma, and
27 gastric reflux disease. At 11:45 PM on February 19, 2025, he complained of acute, severe
28 (7 to 10 out of 10) left-sided chest pain with left hand numbness, and initially accompanied

1 by nausea. Despite two dangerously high blood pressure readings, an EKG showing an
2 electrical abnormality, abnormal skin color, and pain reproducible with palpation, a
3 practitioner who neither saw or examined the patient made the decision to give a single
4 dose of a blood pressure medication, a prescription for a stomach medication, and a drug
5 test in the morning. (*Id.* at 46.) The Monitors concluded that “[f]ailure to arrange [the
6 patient’s] immediate evacuation put the patient at significant risk of death from a heart
7 attack.” (*Id.* at 47.)

8 Patient 45 is a 71-year-old male with 21 problems on his problem list, including
9 asthma, hiatal hernia, gastric polyps, prediabetes, H. pylori infection, gastroesophageal
10 reflux, traumatic brain injury, hyperlipidemia, seizure disorder, and a lumbar spine
11 compression fracture for which he is on 12 medications. He had an acute episode of
12 vomiting “coffee grounds” just past midnight on February 25, 2025, and was seen by an
13 RN, acting independently, using a nursing protocol prohibited by the Injunction. The nurse
14 ordered medication (without a legal physician’s order) to stop the vomiting and ordered no
15 further monitoring, and although the patient vomited again 5 more times, absent any
16 instructions from the nurse, staff did nothing in response to additional vomiting. The
17 Monitors concluded that “[t]his care put the patient at significant risk of massive blood
18 loss and possible death” given that emesis described as coffee grounds is indicative of
19 internal bleeding until proven otherwise requires, at a minimum, close observation for the
20 next several hours and an emergent blood test to check for bleeding. (*Id.* at 48.)

21 The Monitors also detailed examples regarding non-urgent, episodic care creating
22 grave harm to patients.

23 Patient 46 had 6 separate non-urgent encounters over a 6-month period starting in
24 November 2024 that “all demonstrated a failure of multiple different professionals to fulfill
25 the requirements of this provision to provide clinically appropriate episodic care, ultimately
26 leading to a potentially life-threatening complication.” (*Id.* at 49.) In his first visit, despite
27 showing symptoms of a bladder obstruction, a practitioner, without seeing Patient 46
28 simply ordered antibiotics for a bladder infection, even though the patient’s complaints

1 indicated a need for urgent treatment. In his second visit, a week later, Patient 46 reported
2 his symptoms had not improved with the antibiotics and an RN acting independently (in
3 direct violation of the Injunction) failed to examine the bladder, prostate, or kidneys. A
4 week later, the patient was seen again by an RN reporting burning while urinating and back
5 and flank pain; the RN again directly violated the Injunction and repeated the failures of
6 the week before. Four months later, the patient was again seen by an RN for urinary
7 symptoms, and the RN practicing independently (in violation of the Injunction) did not
8 examine the prostate, bladder, or kidney and inappropriately ordered antibiotics. About two
9 weeks later, the Patient reported incontinence and requested to be seen ASAP, but despite
10 the emergent nature of his complaint, he was not seen until six days later; at which point,
11 he had urinary incontinence for two weeks and a non-physician practitioner, in violation of
12 the Injunction, who treated Plaintiff, did not conduct a prostate, bladder, or kidney exam,
13 failed to appreciate the urgency of the situation, and instead ordered non-urgent blood tests,
14 without including a blood test measuring kidney function, and ordered a non-urgent
15 ultrasound of the patient's prostate, despite the urgency of the symptoms.

16 A week later, the patient was still incontinent, asked for the insertion of a foley
17 catheter despite that the patient knew insertion of such catheter is extremely painful, which
18 would have prevented future hospitalization, but the patient was instead placed on more
19 antibiotics. Four days later, the patient exhibited acute changes in his mental status and was
20 finally sent to the emergency room with the findings: "His mental confusion was a result
21 of urinary retention resulting in acute kidney failure complicated by potentially life-
22 threatening blood electrolyte abnormalities (hyperkalemia, hyponatremia, and acidosis),
23 and a urinary tract infection due to a multidrug resistant organism, potentially the result of
24 the misuse of several antibiotics." "Given the high degree of antibiotic resistance of this
25 organism, infection prevention precautions should have been put in place upon return to
26 ADCRR to prevent the spread of this very dangerous and difficult-to-treat organism to
27 other sick patients, putting them at significant risk of serious harm. No such precautions
28 were put into place." (*Id.* at 50-51.)

1 Patient 47 also suffered a kidney function that significantly declined in the latter
2 half of 2024 and both an ultrasound on November 20, 2024 and then a CT scan on
3 December 31, 2024 showed severe back-up of urine into his kidneys (hydronephrosis), but
4 his providers failed to recognize the urgency of the problem, and “[d]ue to the delay in
5 clinically appropriate care, the patient now has irreversible kidney damage that the kidney
6 specialist thinks will likely require hemodialysis.” “Despite the complexity of his case, the
7 patient is assigned to an APP, instead of a physician (in violation of Injunction sections 6.2
8 and 7.3.) However, the assignment is meaningless because over the course of six primary
9 care visits in nine months, the patient has never seen the assigned PCP, saw the same APP
10 for only two of the visits, two different APPs for two other visits, a physician for one visit,
11 and a different physician for a second visit.” (*Id.* at 52.)

12 Patient 49 was undergoing treatment for opioid use disorder, and although a relapse
13 was indicated from the inappropriate care he received in June 2024, in July 2024, a MOUD
14 practitioner wrongly discontinued buprenorphine when the patient did not come to the
15 appointment and an LPN and correctional officer subsequently signed a “refusal” form on
16 July 22, 2024 (in violation of Injunction section 1.21) “which has no meaning nor value as
17 neither actor is competent to conduct an informed refusal.” “Thus, despite the ongoing
18 significant risk of overdose associated with his opioid use disorder, ADCRR failed to
19 engage this patient.” On August 1, 2024, the patient presented with acute urinary
20 symptoms and was diagnosed with a kidney infection, but though his urine also showed
21 large amounts of glucose and ketones consistent with diabetes and possibly ketoacidosis, a
22 life-threatening and urgent complication of diabetes and his kidney infection and diabetes
23 required an examination by a provider and immediate blood testing, no further testing was
24 done, and he was merely started on medications for diabetes and sent back to his living
25 unit. On August 2, 2024, an ICS was triggered because the patient had worsening
26 abdominal pain, he was sent to the ER and diagnosed with sepsis that had resulted in the
27 kidney infection (pyelonephritis) and uncontrolled diabetes and he was started on
28 intravenous antibiotics, but left the hospital against medical advice after two days. A blood

1 infection from MRSA requires a minimum of 10 days of antibiotics (ideally intravenously)
2 and without proper treatment often causes secondary infection in the body (e.g., heart
3 valve, organs, bone.) The remote APP, charged with reviewing his condition immediately
4 upon return to the facility on August 4, 2024, failed to seek any records regarding his
5 hospital stay until almost two weeks later on August 14, 2024. Due to this information
6 vacuum, Defendants did not provide any effective antibiotics for his serious kidney and
7 blood stream infection and never addressed with this patient the ongoing risk of inadequate
8 treatment of his life-threatening infection. His diabetes also remained out of control (blood
9 glucose greater than 400, extremely elevated.) Thus, he remained at ongoing risk of serious
10 medical harm from both infection and diabetes. An on-site practitioner saw the patient on
11 August 23, 2024, almost 3 weeks after he left the hospital, but failed to address the patient's
12 blood infection or high sugars, which were urgent clinical issues. A different practitioner
13 started long-acting insulin without seeing the patient. On September 1, 2024, the patient
14 was first seen for neck pain by a nurse and told he was sleeping wrong. He was seen by
15 nursing again on September 3 and 4, 2024 for ongoing neck pain and stiffness.

16 Each of these visits, conducted by a nurse practicing independently, were clear
17 violations of the Injunction (section 7.4.7) and caused harm, as his untreated infection had
18 now invaded the bones of his spine and required urgent management. An on-site
19 practitioner saw the patient on September 6, 2024, and gave him muscle relaxants, warm
20 compresses, and a referral to physical therapy. The practitioner noted needle marks on the
21 patient's carotid veins, a sign he might still be using drugs intravenously, which increases
22 his risk of re-infection of his blood and the ongoing risk from his inadequately treated prior
23 blood infection. The practitioner should have, but did not, consider and evaluate the patient
24 for serious infection based on his clinical history (in violation of Injunction section 1.1.)
25 Nurses, acting independently, again saw the patient for ongoing head and neck pain on
26 September 17, 23, and 24, 2024, when he was finally referred back to a practitioner. He
27 eventually had blood tests drawn on September 26, 2024, which were reported back to
28 Defendants on September 28, 2024, but were not reviewed until October 7, 2024 (in

1 violation of Injunction section 4.3.) On September 28, 2024 the patient was finally sent
 2 emergently to the hospital due to headache, decreased level of consciousness, incontinence,
 3 lethargy, rocking in pain, and shivering. His MRSA infection now involved his blood, heart
 4 valve, heart tissue, brain, and spine. The infection was so severe at this point, that it
 5 required not only intravenous antibiotics, but also antibiotics administered directly into the
 6 fluid around the brain. A note on October 19, 2024 documented a call between the doctor
 7 in the hospital and a practitioner at the prison in preparation for discharge that requested
 8 weekly labs results be faxed to the hospital for review until the patient was predicted to be
 9 off intravenous antibiotics (November 20, 2024) and follow-up with a heart specialist and
 10 an infectious disease specialist around the time antibiotics were to be ending. None of these
 11 necessary measures occurred as requested (in violation of Injunction section 1.1.)

12 Upon return from the hospital on October 22, 2024, Defendants placed the patient
 13 in an IPC or SNU bed (the medical records contain contradicting statements.) The patient
 14 had vital signs and nursing assessments conducted at haphazardly spaced intervals,
 15 sometimes going days without any vital signs or a nursing assessment which was not
 16 clinically appropriate based on the patient's clinical acuity (in violation of Injunction
 17 section 7.6.)

18 Given his condition, this lack of adequate nursing care
 19 placed him at great risk for serious medical complications. In
 20 light of the patient's known serious heart, brain, and spine
 21 infection in the setting of poorly controlled diabetes, he also
 22 required daily examinations by a practitioner upon admission
 23 back to [Defendants], if not more frequent examinations,
 24 especially when he started complaining of worsening neck pain
 25 and new urinary incontinence on November 6, 2024. Instead,
 26 from the date of discharge from the hospital (October 22, 2024)
 27 until December 7, 2024, practitioner care was provided only
 28 via telehealth using remote personnel and only on the
 following dates: October 22, 23, 25, November 6, 19, 21, 26,
 29, and December 1, 2024. During this time period, he was
 never once examined by a provider for changes in his heart,
 brain, or spinal cord function, despite their highly vulnerable
 status. His antibiotics were discontinued on November 20,
 2024 without any clinical reassessment by an onsite provider

1 or outside specialist to determine if this was still clinically
2 appropriate. This was extremely dangerous as it is important to
3 ensure a serious infection is improving based on clinical
4 signs/symptoms and laboratory tests before stopping a course
5 of intravenous antibiotics and to establish a long-term
6 treatment plan (in violation of section 1.1.) In fact, this patient
7 did not see an on-site provider until December 7, 2024, almost
8 six weeks after his hospitalization, and only after going back
9 to the hospital on December 1, 2024 for worsening symptoms.
10 Due to the seriousness of the infection, even after completing
11 a course of intravenous antibiotics, he was started on a year-
12 long course of oral antibiotics at the hospital. The patient was
13 not scheduled with a neurosurgical specialist until March 7,
14 despite discharge from the hospital on October 22, 2024 with
15 instructions to wear a cervical collar at all times due to concern
16 about the stability of the bones in his neck and compression of
his spinal cord. The cardiology consultation that was supposed
to occur in late November 2024 for his serious heart infection
was not scheduled to take place until February 10, and then was
rescheduled to April 17 due to insufficient ADCRR
transportation resources. The infectious disease consultation to
follow-up on the overall management his life-threatening
infection that was also supposed to occur in late November is
still not scheduled as of June 23.

17 (*Id.* at 53-57.)

18 Patient 50 is a 41-year-old male with a number of serious conditions, including heart
19 disease, was seen on February 19, 2025 complaining of intermittent chest pain and
20 experiencing a discharge of the internal defibrillator. The APP did not obtain further
21 essential history and examination and noted she was unable to conduct a physical exam
22 due to telemedicine, but made no effort to have a physical examination scheduled. Despite
23 that these symptoms required urgent or emergency referral to a cardiologist, the APP
24 ordered a routine referral. This was the first time this patient saw this APP and over the
25 course of six months since his arrival in early January 2025, Defendants assigned him a
26 new PCP 18 times, only 2 of those assignments were to physicians, and only for a total of
27 5 days; the rest were all APPs (or indeterminate.)

28 Patient 51 was found to have an abdominal aortic aneurysm during a hospitalization

1 and incorrectly referred to a cardiologist rather than a cardiovascular surgeon. The
2 Monitors concluded that “in light of the great delays ADCRR is experiencing in getting
3 patients to the specialists they need to see on time due, in part, to caps on daily custody
4 transportations . . . such inappropriate referrals exacerbate those delays, indirectly leading
5 to a dangerous delay of more urgent and necessary consults.” (*Id.* at 58-59.)

6 Patient 52 was diagnosed with multiple myeloma, a serious blood cancer, during a
7 hospitalization, and upon discharge on February 20, 2025, hospital specialists
8 recommended that he receive the next dose of chemotherapy the following day, and then
9 see the oncologist two to three days later, but the patient did not have the chemotherapy
10 for 5 weeks, and did not see the oncologist until March 14, and Defendants did not provide
11 the oncologist the medical records. The Monitors opined that “[f]ailure to arrange timely
12 continuation of the chemotherapy to bring the cancer under control started in the hospital,
13 put the patient at significant risk of serious harm.” (*Id.* at 60.)

14 Patient 53 has Type 2 diabetes and is on insulin; the order to have his blood glucose
15 checked every morning expired on March 10, 2025 and, since then, he has received
16 inconsistent blood tests. The Monitors conclude “This above continuing error in nursing
17 care might have been noticed had the patient had a primary care practitioner and had been
18 receiving chronic care for his diabetes. Instead, he was last seen on March 5 by an APP
19 other than his assigned PCP (in violation of Injunction section 7.2) for diabetes. The APP’s
20 plan for management of the patient’s diabetes was for him to return to the clinic if the
21 patient felt it was necessary or had any concerns about diabetes. There was a chronic care
22 clinic appointment scheduled for June 16, but that date has come and gone without a visit
23 (in violation of Injunction section 1.22c.)” (*Id.* at 62-63.)

24 Patient 54 had an MRI ordered in response to a concern about a spinal cord mass on
25 February 25, 2025. Defendants did not schedule the MRI to be completed until April 4, in
26 part because of a failure to treat the situation with sufficient urgency and in part due to
27 transportation being unavailable, which risked irreparable harm because a mass on the
28 spinal cord could cause irreversible paralysis. The April 4, 2025 MRI did not occur;

1 although this was not the fault of the Defendants, it was not rescheduled immediately and
2 was not completed until May 9, 2025. The Monitors opine that the 9-10 week delay posed
3 a serious risk of harm to Patient 54. (*Id.* at 64-65.)

4 Patient 58 has Hodgkin's Lymphoma and was last seen by an oncologist in July
5 2024. Despite evidence of possible cancer spread and a recommendation from the
6 oncologist that the patient see an oncologist specializing in lymphoma, the appointment
7 was not made for more than 8 months, which caused "avoidable suffering due to inadequate
8 pain management." (Doc. 4968 at 69-70.)⁵¹

9 Patient 59 has HCV-related liver cancer. On September 20, 2024, a surgeon
10 recommended that Defendants refer him to an interventional radiologist to ablate two
11 cancerous lesions in the liver and then obtain an MRI four months hence. The APP ordered
12 the referral as "routine," i.e., within 2 months (in violation of the Injunction section 1.1.)
13 The patient's assigned PCP was another APP (in violation of the Injunction, section 6.1-
14 6.2.) The first APP's order was ignored (in violation of the Injunction, section 1.22) and he
15 was not seen. The referral to remove the cancer, which, if completed as ordered, should
16 have been completed by November 30, 2024 was not scheduled until January 3 (in violation
17 of the Injunction, section 1.22d), but the removal of the cancer did not occur on this date,
18 and instead, the patient was mistakenly sent for another MRI, which MRI showed the larger
19 of the two cancers had grown by more than 50% from 42 mm to 66 mm. On January 23,
20 an oncologist saw the patient and reiterated that the patient needed to be seen by the
21 interventional radiologist STAT sending back a hand-written note with the patient. Due to
22 his concern that the patient's care was not being addressed, he also followed up with a
23 typed note containing the need for a STAT referral and stating "This was conveyed to the
24 prison via notes, as well as, a phone call to the prison coordinator."

25 The handwritten note has been in the patient's chart since January 23, 2025, and as
26 of July 2025 had not been reviewed by a clinician (in violation of Injunction section 4.4.2
27 requiring review within four days.) On April 28, 2025, an APP who was not the patient's
28

⁵¹ This Patient had not yet been seen by the specialist at the time of the Monitor's report.

1 PCP saw the patient in a primary care visit (in violation of Injunction section 6.1/6.2 and
2 in violation of Injunction section 6.3), noted the need for an urgent visit with an
3 interventional radiologist to ablate the cancer lesion in the liver and ordered it with urgent
4 priority, but it was not scheduled to take place until June 5 (in violation of the Injunction,
5 section 1.22d.)

6 The Monitors opine that as a result of these numerous violations of the Injunction,
7 a patient with potentially curable liver cancer that was first identified on September 20,
8 2024, for whom removal of the cancer should have taken place by the end of September,
9 2024, did not have that treatment until June 5, 2025 more than nine months later, resulting
10 in progression of cancer, and decreased overall rate of survival. (*Id.* at 70-72.)

11 Patient 64 was seen for management of his diabetes on February 20, 2025. During
12 the visit, it was noted a diabetes-related test from December was mild to moderately
13 elevated; the practitioner ordered a repeat test, which was returned on February 22, 2025
14 showing that his diabetes was now much more poorly controlled. The practitioner did not
15 review the result in a timely manner (in violation of Injunction section 4.4.2.) As a result,
16 the patient had a very abnormal test result on February 22 that was not shared with the
17 patient until April 22, not treated in the interim, and for which there was an intentional plan
18 that the patient would not receive treatment until May 2, almost 3 months later (in violation
19 of Injunction section 1.1) placing the patient at risk of serious harm. (*Id.* at 79.)

20 Patient 70, a 21-year-old Spanish-speaking male, was initially seen by a nurse on
21 February 1, 2025 at approximately 9:30 a.m. without an interpreter (in violation of
22 Injunction section 3.1) for a complaint of constant right upper quadrant abdominal pain
23 with nausea and vomiting 15 times, starting that day. The patient was noted to be pale with
24 abdominal pain on exam in the right upper quadrant. A remote practitioner prescribed
25 fluids by vein and mouth and ordered anti-nausea medications, and directed the
26 practitioner be updated in one hour, but no one ever did any follow up. The patient returned
27 the next day with 9/10 abdominal pain and nausea. A nurse, practicing independently, cared
28 for the patient using a disallowed Abdominal Pain or Injuries Nursing Protocol. The patient

1 was seen again by an RN on February 3, 2025 for continuing nausea and a loose stool, low-
2 grade fever of 100.9, and abdominal pain 10 out of 10. The patient was put on a bland diet
3 and full liquid diet simultaneously and told to drink fluids and rest, was given an
4 antidiarrheal even though he said he only had one stool in the past 24 hours, and the nurse
5 obtained an order for acetaminophen from a practitioner since it was not available in
6 commissary, but a provider still never saw the patient and there is no indication that the
7 nurse discussed the case with the practitioner beyond asking for permission to use stock
8 acetaminophen.

9 On February 5, 2025, the patient was seen by yet another nurse because he now had
10 fever, chills, headache, and dizziness. Although he had a fever, the nurse told him to come
11 back if “any other [symptoms] return.” On February 6, 2025, he was seen for the sixth time
12 with intermittent right upper quadrant abdominal with chills all night, pain when his
13 abdomen was pressed and a fever of 102. He was given acetaminophen and a practitioner
14 ordered laboratory tests and an abdominal ultrasound without seeing the patient or sending
15 the patient to the ER. The ultrasound was not done until the next day, February 7, resulting
16 in the patient being sent immediately to the hospital due to a finding of acute inflammation
17 of the gallbladder with a gallstone in the duct on ultrasound. He underwent urgent surgery.
18 During the operation, the degree of inflammation present made the surgery difficult. The
19 Monitors opine that the delay in care due to the repeated nurse visits could have led to
20 sepsis and death, and likely increased the patient’s risk of surgical complications due to the
21 amount of inflammation present. There were numerous violations of section 1.1 of the
22 Injunction throughout this patient’s care. (*Id.* at 91-92.)

23 Patient 78 is a 29-year-old male with Type 1 Diabetes on insulin and has suffered 4
24 episodes of low blood sugar, only receiving insulin once he becomes delirious or
25 unconscious, which could have been avoided by allowing him to have oral glucose in his
26 possession in violation of Injunction provision 10.5.5. Allowing low blood sugar to the
27 point of unconsciousness in Patient 78 presents a risk of permanent brain damage or death.
28 (*Id.* at 112.)

1 All of the above examples identified by the Monitors in their report echo the same
 2 unconstitutional care presented during the 2021 trial. And they reflect, despite Defendants’
 3 promises to address them by strictly adhering to the requirements of the Injunction,
 4 prisoners still remain exposed to an intolerable grave and immediate threat of continuing
 5 harm and suffering because the systemic deficiencies pervade the administration of health
 6 care.

7 Accordingly, the first factor supports the appointment of a receiver. *See United*
 8 *States v. Hinds Cnty.*, No. 3:16-CV-489-CWR-BWR, 2023 WL 1186925, at *12 (S.D.
 9 Miss. Jan. 30, 2023) (first *Plata* factor favors the appointment of a receiver where “the
 10 conditions have not improved, nor has the situation become any less unconstitutional since
 11 [defendant] was last directed to remedy the problems.”) (internal quotations and citation
 12 omitted); *Nunez v. New York City Dep’t of Correction*, 782 F. Supp. 3d 146, 161–62
 13 (S.D.N.Y. 2025), *reconsideration denied*, No. 11-CV-5845-LTS-RWL, 2025 WL 2939046
 14 (S.D.N.Y. Oct. 16, 2025) (same.)

15 **2. Exhaustion or Futility of Less Extreme Measures**

16 Since this litigation commenced, rather than imposing the most punitive sanctions,
 17 the Court has painstakingly sought to and imposed the least restrictive measures and
 18 requirements on Defendants to incentivize compliance with the Constitution. Magistrate
 19 Judge David Duncan was devoted to tirelessly working with both parties to design an
 20 agreement that created medical Performance Measures that Defendants unreservedly
 21 agreed to fulfill.

22 But between 2016 and July 2021, Plaintiffs, frustrated with Defendants’ persistent
 23 unconstitutional conduct, filed twelve motions to enforce the Stipulation, followed by
 24 multiple evidentiary hearings and status conferences which resulted in dozens of orders
 25 with detailed directions mandating Defendants comply with the 2014 Stipulation. What
 26 followed was three Orders to Show Cause why Defendants should not be held in contempt,
 27 which required the Court appoint experts, resulting in Defendants being held in contempt
 28 twice. They were fined millions of dollars upheld on appeal. (*See, e.g.*, Docs. 2898, 3861.)

1 Finally, an exasperated Court found Defendants had blatantly refused to comply with the
2 Stipulation, having offered baseless legal and factual reasons. The substantial fines, and
3 threats of more, proved worthless as an attempt to bring Defendants into constitutional
4 compliance. (Doc. 4335 at 4.)

5 The Court appointed many experts and held a bench trial in 2021, which disclosed
6 even more shocking, unconstitutional healthcare, including what can only be described as
7 cruelty. One prisoner suffering extreme pain at the end of life was refused palliative care
8 by the private contractor, Centurion, because he had been designated “Do Not Resuscitate,”
9 which, as a matter of simple common sense, is irrelevant to palliative care. Consequently,
10 “his cachectic body was racked with pain, and he wasted away with no reasonable
11 assistance from medical science in the form of comfort or compassionate pain control.”
12 (Doc. 4335 at 53.)

13 The 200-page 2022 Order containing Findings of Fact identified with graphic detail
14 that if Defendants had ever intended to abide by the 2014 Joint Agreement, they abjectly
15 failed. Thus, the long and difficult history of Defendants’ noncompliance throughout the
16 litigation informed the Court that robust, stringent, firm barriers and requirements were
17 necessary to compel Defendants to constitutional compliance. Thus, the uniformly agreed
18 upon 2023 Injunction emphasized it was inspired by the many years of Defendants’
19 recalcitrance and resistance to change such that the Court would demand strict compliance.
20 The Court stated, “the changes necessary to redress the failures will be substantial.” (Doc.
21 4410 at 4.) And “significant detail regarding medical care [and] mental healthcare” will be
22 clearly articulated. (*Id.*)

23 Defendants offer the appropriate period for consideration for this motion is the time
24 since the April 2023 entry of the Injunction because the Injunction “dramatically altered
25 what the Department is required to do.” (Doc. 4818 at 18.) This reflects Defendants’
26 profound misunderstanding of the law and facts of this litigation. The alleged
27 unconstitutional violations by the Defendants in the complaint are the same
28 unconstitutional violations that have occurred throughout the long history of this litigation.

1 From the beginning, Defendants were alleged to have failed to provide medical and mental
2 health care as required by the Constitution, and the Injunction, which Defendants helped
3 draft and to which they stipulated in 2023, reflects the exact same violations that have
4 persisted throughout this litigation. The preamble to the Injunction reads the “unusual
5 scope of this Injunction is informed by Defendants’ actions throughout the case . . . the
6 Court cannot impose an Injunction that is even minutely ambiguous because Defendants
7 have proven they will exploit any ambiguity to the maximum extent possible.” And the
8 breadth of the Injunction is not a “dramatic” alteration of Defendants’ obligations. Rather,
9 it is a comprehensive elucidation of what has always been required of the Defendants. And
10 the obligations of the Injunction are the same as those required of Defendants in the 2014
11 Joint Stipulation.

12 The 2023 Injunction—a much less extreme measure than receivership—was
13 ordered with the manifest goal of offering Defendants a hoped-for final opportunity to
14 remedy their constitutional violations. This less restrictive sanction designed to invite
15 Defendants’ compliance has failed again. (*See* Doc. 4410 at 2 n.1 (“The decision not to
16 appoint a receiver was based on the Court’s expectation that Defendants appeared willing
17 “to cooperate” and “act in good faith” in monitoring their performance under an Injunction.
18 . . . Any failure to act in good faith **or to meaningfully comply** with this Injunction will
19 revive consideration of appointing a receiver.”) (emphasis added).) The history of the
20 Injunction bears briefly repeating.

21 As noted above, since entry of the Injunction, Defendants’ paltry efforts to remedy
22 the constitutional violations in the provision of healthcare have been in substantial
23 conformity with their behavior throughout the litigation. Within three months of the
24 effective date of the Injunction, in July 2023, Defendants were in fundamental violation
25 because of serious lack of critical staffing. A series of lengthy hearings, attended by
26 Director Thornell, were held from August 2023 to May 2024 to prompt Defendants into
27 compliance. Plaintiffs and the Court refrained, at each of those hearings, from initiating
28 immediate contempt sanctions and Defendants were repeatedly urged by the Court to find

1 ways to meet the requirements of the Injunction. Instead, Defendants, in violation of the
2 Injunction and law, repeatedly placed the entire blame on the contractor, NaphCare. The
3 Court emphasized to Director Thornell at the March 2024 hearing that compliance,
4 including increasing staff, was essential. The Court inquired what he planned to which he
5 responded: “[w]e discuss it” and he has “sent letters.”

6 Also of significance is Defendants’ startling response in 2024 to the Monitors’
7 opinions in which Defendants stated that the Monitors failed to provide a “how-to” plan to
8 achieve compliance, which was never contemplated by the Injunction. And Defendants
9 have repeatedly attempted to excuse their conduct by arguing funds are not available and
10 the legislative process to seek more funds is impractical, unworkable, and essentially
11 nonfunctioning. In particular, regarding attempted funding of the Pilot project, the
12 Defendants initially resisted and informed the Court the problem was not with Defendants
13 but because of the “NaphCare contract” and the “healthcare” generally. Defendants stated:
14 “Because for this fiscal year they’re already millions of dollars over budget because of the
15 Injunction and the healthcare and the NaphCare contract.” (Doc. 4634 at 112.) Defendants
16 added, “we don’t have the money It would require a new contract with NaphCare. It
17 would require approval of the JLBC.” The mutually agreed upon Pilot was ordered to assist
18 Defendants in shifting to the PCCM and to allow for a smaller initial implementation by
19 Defendants, rather than requiring implementation of the entire, much larger staffing plan
20 across all facilities. However, Defendants’ participation was so deficient that it completely
21 undermined any confidence in their ability to ever implement the PCCM and more widely.

22 Again, Defendants are non-compliant with 131 of 154 Quality Indicators of the
23 Injunction. (*See* endnote 1.) Defendants have failed to accept the feedback, instruction, and
24 coaching from the neutral Monitors. Although Defendants chose the Monitors, who “have
25 been providing such feedback, heavily, in formal reports, in informal documents, and—
26 over hundreds of hours—orally, since the inception of the Injunction (if not before), [and]
27 have also offered numerous additional meetings with the Health Services Division staff to
28 assist Defendants with reviewing and understanding the requirements of the Injunction and

1 [the Monitors’] methodology,” Defendants “declined” “those offers.” (Doc. 5040 at 5.)
2 Defendants have nonsensically claimed that hiring “an individual or individuals with
3 significant health care management experience to help Defendants reform the current
4 system,” though less extreme than a receivership, would be duplicative and unnecessary
5 given their intent to receive recommendations from a consulting firm. (Docs. 4552 at 15;
6 4566 at 6-7.) Defendants never explained how this would accomplish something different
7 or better than what the Monitors have already provided. Moreover, the consulting firm’s
8 eventual report produced no discernible change.

9 Defendants suggest a special master would be preferable to a receiver, but “[a]
10 special master is primarily useful for conducting hearings and making recommended
11 findings of fact [and Defendants have] not raised any factual issues to be addressed in such
12 hearings, and [have] not asked for those hearings.” *Plata*, 603 F.3d at 1098. Moreover,
13 Defendants were already effectively provided a very well-qualified dedicated special
14 master that they proceeded to squander. Magistrate Judge David Duncan, for six years,
15 worked tirelessly, sometimes weekly, with Defendants and Plaintiffs to identify ways, and
16 to design an acceptable plan, to allow Defendants to remediate the unconstitutional
17 healthcare. It failed because Defendants chose to completely resist the terms and
18 requirements of the Stipulation. There is no justifiable basis for a special master that would
19 serve any purpose beyond that already fulfilled by the Court’s Rule 702 experts and
20 Monitors.

21 The Court’s efforts have proven to be an exercise in futility. To date, and despite
22 the repeated offers of assistance and advice from the Monitors, Defendants offer no
23 concrete plan to achieve compliance other than to limp along with their continuing failure
24 to comply with the Injunction. Accordingly, the second factor favors appointment of a
25 receiver. *See Coleman v. Newsom*, No. 2:90-CV- 0520 KJM SCR P, 2025 WL 2475040, at
26 *10 (E.D. Cal. Aug. 27, 2025) (“Notwithstanding the court’s substantial effort, . . . the
27 work is unfinished, the progress too slow and no end in sight if the current framework
28 remains in place.”); *Nunez*, 782 F. Supp. 3d at 162–63 (“The DOC has repeatedly failed to

1 incorporate the Monitoring Team’s thoughtful recommendations, which are backed by
 2 years of expertise, experience and research, and ‘has taken few concrete actions to adopt
 3 these recommendations (or devise reasonable alternatives)’ to come into compliance with
 4 the Contempt ProvisionsThis pattern has been well documented by the Monitoring
 5 Team for yearsThere is no doubt that these less extreme measures have proven
 6 futile.”.)

7 3. Effectiveness of Continued Insistence on Compliance

8 In issuing the Injunction, the Court stated:

9 **Moreover, the unusual scope of this Injunction is informed**
 10 **by Defendants’ actions throughout this case. Despite their**
 11 **agreement and promise to the Court to do otherwise,**
 12 **Defendants have fought every aspect of this case at every**
 13 **turn.** Defendants entered into a settlement agreement where
 14 they claimed they would improve the care provided to
 15 prisoners and improve the conditions of confinement for the
 16 subclass. Yet almost immediately Defendants failed to perform
 17 those obligations and continued in that failure. Instead of
 18 acknowledging their failures, Defendants kept inaccurate
 19 records and unreasonably misread the settlement’s
 20 requirements to their advantage. During trial, Defendants
 21 presented arguments and witnesses that were manifestly
 22 unreliable and unpersuasive. And on some aspects, Defendants
 presented no meaningful defense at all...Most importantly,
 trial established **Defendants blatantly had not made any**
serious effort to remedy the flaws highlighted by this
litigation. Given this history, the Court cannot impose an
Injunction that is even minutely ambiguous because
Defendants have proven they will exploit any ambiguity to
the maximum extent possible.

23 (Doc. 4410 at 4-5 (emphasis added).) Despite this finding of continuous resistance
 24 throughout this litigation, Defendants appear oblivious to the ongoing harm caused by their
 25 actions. Defendants persist in challenging the Injunction they approved. Many examples
 26 of Defendants’ non-compliance with the Court’s Orders and the Injunction have been
 27 mentioned, but some very recent instances particularly demonstrate the ineffectiveness of
 28 continued insistence on compliance with the Injunction.

1 During the staffing Pilot, Defendants’ Health Services Division (HSD) PCCM
 2 Team, Pilot Front-Line Staff Teams, and Court Experts were required “to provide coaching
 3 to the front-line Pilot clinical teams, identify emerging issues and needs, and to build the
 4 HSD PCCM Team’s experience with coaching, distilling team experience and applying it
 5 to other teams.” (Doc. 4761 at 9.) Although the meetings should have begun on October 8,
 6 Defendants instructed the Monitors to not have any contact with the Pilot team staff without
 7 HSD and were told to only schedule these meetings with HSD. (*Id.*) Despite numerous
 8 requests from the Monitors, HSD ignored all of them with the exception of one meeting in
 9 November. (*Id.*) As a result, at the end of the Pilot, front-line teams, “reported needing far
 10 more hands-on support, especially during their early weeks of the Pilot,” and the failure to
 11 schedule these meetings meant “the teams . . . did not receive support in using process
 12 improvement cycles, developing open scheduling, developing RN roles, strengthening
 13 daily huddles, . . . did not experience coaching and their skill set did not grow as intended,
 14 [and] did not gain experience with many of the components of the PCCM and are therefore
 15 not able at this time to serve as ‘ambassadors’ to other units and complexes on these
 16 components during the statewide implementation of the PCCM.” (*Id.* at 9-10.) This also
 17 meant the Monitors were left to try to gain data necessary to evaluate the Pilot from other
 18 sources. (*Id.* at 10.)

19 Again and throughout, Defendants repeatedly attempt to defend their behavior by
 20 claiming lack of resources—money, space, and the NaphCare contract. And they have
 21 repeatedly been reminded of binding authority⁵² that money and space is required to be
 22 utilized to bring healthcare to prisoners into constitutional compliance.

23 The Pilot Program was designed to provide Defendants a significant opportunity to
 24 demonstrate they could comply with the Injunction on a smaller scale. Despite the Court’s
 25 clear, specific orders, Defendants “were not able to secure staffing for all positions needed
 26 to fully implement the Pilot.” (Doc. 4814 at 7.) As noted above, Defendants did not run the
 27 Pilot fully at either site, and it was terminated at one site after only eight days. The

28 ⁵² See *Peralta v. Dillard*, 744 F.3d 1076 (9th Cir. 2014.)

1 termination was attributed to insufficient space, even though Defendants had specifically
2 selected the pilot sites, and had been on notice of the inadequacy of space at that site since
3 at least July 2024.

4 Similarly, complex-wide communication about the Pilot was necessary “to build
5 anticipation about the PCCM and staffing plan, quell rumors, and give staff a venue for
6 asking questions.” (Doc. 4761 at 11.) Despite the Court’s instructions, the fact that
7 Defendants’ Facility Health Administrators welcomed and sought such communication as
8 they were barraged with questions and rumors, and the Monitors “described a number of
9 venues through which this could occur including newsletters, reports at staff meetings,
10 email blasts, FAQs, discussion groups, staff and patient testimonials, and more,”
11 Defendants did not comply. (*Id.*) Indeed, the Court “required communication across the
12 rest of the ADCRR complexes beginning in late September and continuing throughout
13 December to prepare the other seven complexes for the statewide rollout of the PCCM and
14 staffing plan.” (*Id.*) Defendants did not do any of it; instead they created an unmonitored
15 email address, which did not accomplish any goals. (*Id.*) Defendants did not implement
16 any of the communications and failed to inform health care and custody staff at the other
17 complexes of the PCCM or staffing plan. (*Id.*)

18 Defendants still have no plan to fully implement the PCCM and related staffing and
19 space provisions of the Injunction, even though the Monitors “have been providing such
20 feedback, heavily, in formal reports, in informal documents, and—over hundreds of
21 hours—orally, since the inception of the Injunction (if not before) [and] have also offered
22 numerous additional meetings with HSD staff to assist Defendants with reviewing and
23 understanding the requirements of the Injunction and [the Monitors’] methodology, but
24 have had those offers declined.” (*Id.* at 5.)

25 Defendants offer and exalt heavy reliance on some improvements and promises of
26 more as if they should be praised, not sanctioned. The Monitors readily credit Defendants
27 where appropriate, but find Defendants significantly overrepresent their success in
28 substance use treatment and HCV treatment. (*Id.*) In fact, the improvements are a small
fraction of the Injunction and “taking into account the nature, number, and speed of

1 improvements, does not change [the] core findings” that non-compliance with the
 2 Injunction persists and poses serious risks of harm to the prisoners. (*Id.* at 38.)

3 Of equal concern is the substantial undermining tension between Defendants and
 4 NaphCare. Defendant Thornell, as Director, is tasked with providing constitutionally
 5 adequate healthcare to those in his custody. As noted above, the Court has repeatedly
 6 inquired of Director Thornell what provisions he has incorporated into the contract to
 7 ensure NaphCare provides constitutionally adequate healthcare in compliance with the
 8 Injunction and what sanctions have been implemented when NaphCare repeatedly breaches
 9 the contract. Despite the many years this action has been pending, four years since the trial,
 10 almost three years since the effective date of the Injunction, and the new leadership who
 11 claim to be committed to achieving constitutionally adequate care, the answers to these
 12 questions either do not exist or are unavailing. When the Court inquired, Defendants
 13 blamed the “NaphCare contract,” the “cost of providing healthcare,” and “the Injunction”
 14 as reasons they were unable to fully engage in the Pilot. (Doc. 4634.) Although the Court
 15 has, pursuant to the express terms of the contract, often inquired of Defendants about
 16 sanctioning their healthcare provider, Defendants have shown no cognizable interest in
 17 imposing sanctions that would result in actual change. Based upon a list provided by
 18 Defendants, as of September 22, 2025, Defendants have imposed \$1,424,900 in sanctions
 19 since the inception of the Injunction.⁵³ Indeed, the CEO of NaphCare averred that
 20 “sanctions . . . have not in any way incentivized or influenced NaphCare’s performance or
 21 compliance.” (Doc. 4616-1 at 25 ¶ 10.) Although there is evidence in the record that
 22 Defendants’ inability to directly control NaphCare interferes with implementation of the
 23 Injunction, the Director has never contended that he is unable to comply with the Injunction
 24 due to NaphCare’s involvement in prisoner healthcare and, as the Court has previously

25 ⁵³ “Of this, \$645,000 was for 4 errors in patient care and 1 failure in a patient care process.
 26 The remainder appears to be for vacancies in mental health staff and failed inventory audits.
 27 Despite vacancies in mental health staff that existed consistently during the 28 months in
 28 question, Defendants only sanctioned NaphCare for vacancies that existed during 9 of those
 28 months. Defendants did not sanction NaphCare for vacancies in medical staff during
 any month.” (Doc. 5040 at 2.)

1 noted, Defendants have a non-delegable duty to provide constitutional healthcare to
2 prisoners. (*See* Doc. 2898 at 16.)

3 Moreover, the Monitors document Defendants’ unwillingness or inability to prepare
4 NaphCare for implementation of the Injunction. (*See* Doc. 4761 at 11 (the Monitors “do
5 not believe that any steps have been taken by [Defendants] to discuss the need to empanel
6 and assign patients with NaphCare, to teach NaphCare how to run the empanelment
7 program, or to otherwise plan to execute this first step in implementing the staffing model
8 statewide.”) Finally, as noted above and of substantial significance, Defendants did not
9 object, or much less, even respond to NaphCare’s Motion to Intervene despite NaphCare’s
10 bold assertion it had “significantly improved the healthcare system.” Although NaphCare
11 claimed it did not intend to relitigate the Injunction, NaphCare also stated in the Motion to
12 Intervene it fully intended, in violation of the contract, to “tinker” with the Injunction
13 provisions such as “staffing levels.” It is not surprising NaphCare would be concerned
14 about efforts to increase staff and raise their salaries because increasing staff might affect
15 profits negotiated in the contract.

16 It is indeed “resoundingly clear” that rather than genuinely attempting to comply
17 with the Court’s orders and the Injunction or set forth any concrete plan of compliance,
18 Defendants will continue to object to and fight each aspect of the Court orders, keep
19 inaccurate records, unreasonably misread the Injunction’s requirements to their advantage,
20 offer unacceptable excuses for violations, and exploit any ambiguity to the maximum
21 extent possible. *Plata*, 2005 WL 2932253 at *29; *see supra* at 37-38. It now falls to the
22 Court to ensure that the Constitution is upheld.

23 The third factor supports the appointment of a receiver. *See Coleman*, 2025 WL
24 2475040, at *10 (“Even if there are finally a few signs of progress with respect to staffing,
25 defendants do not appear close to achieving completion of the staffing remedy, let alone
26 durably. . . . And staffing is but one aspect of the remedy long unfulfilled. Particularly if
27 the court must continue to rely on contempt proceedings to obtain compliance with its
28 orders, there is no indication defendants’ reflexive practice of appealing the court’s orders
will cease.”); *Nunez*, 782 F. Supp. 3d at 163 (finding that a persistent pattern of slow

1 compliance with Court Orders “despite support and guidance from the Monitoring Team
2 reinforces the Court’s conclusion that continued insistence on Defendants’ proactive
3 compliance with Court orders would only lead to further delay” and supports the third
4 factor of receivership.)

5 **4. Lack of Leadership.**

6 Defendants assert the Department’s leaders are committed to complying with the
7 Injunction and making progress toward that goal and contend they should be allowed to
8 continue these efforts, perhaps forever. However, the Monitors’ reports reveal a stark lack
9 of leadership able to effectively implement the requirements of the Injunction.

10 An additional, very recent example is instructive. In the wake of the staffing Pilot’s
11 abysmal conclusion, the Monitors opined that “[Defendants do] not have a plan for, nor the
12 leadership expertise to, implement patient empanelment beyond the Pilot sites.” (Doc. 4761
13 at 16.) HSD ignored the Monitor’s repeated emphatic recommendation to designate a
14 project manager, resulting in lack of organizational project management, revealing
15 “[Defendants do] not have the project management capacity to roll the PCCM out statewide
16 and implement the statewide staffing plan,” or the “capacity to manage the schedule,
17 marshal all assignments and deliverables, assign resources, track progress, effectively
18 engage other ADCRR resources, and effectively interface with NaphCare.” (Doc. 4761 at
19 13-14.) The Monitors further concluded that Defendants lack the technical expertise or
20 tools to calculate the staffing of patient primary care or mental health teams based on panels
21 and caseloads, or to modify staffing at some point in the future when patient complexity
22 changes and Defendants have no mental health or medical leaders who have experienced
23 or been trained in the PCCM model. (Doc. 4761 at 16.)

24 Defendants dismiss the grim performance of the staffing Pilot and its introduction
25 of the PCCM as insignificant and not indicative of their leadership or seriousness. But
26 Defendants either do not understand or have chosen to ignore the purposes of the Pilot and
27 the importance of the PCCM, which is fundamental to the Injunction. The Pilot was a vital
28 step toward constitutionally adequate care because adequately trained staffing is a

1 prerequisite for “successful fulfillment of the health care-related requirements of the
2 Injunction” (Doc. 4539 at 16), and was, in many ways, the perfect opportunity for
3 Defendants to demonstrate their willingness and ability to comply with the requirements
4 of an Injunction. Defendants’ abject failure to implement it at only two sites they
5 themselves selected, comprising only 8% of ADCRR’s inmate population, is clearly
6 demonstrative of their inability to achieve full compliance.

7 Plaintiffs also point out that in March 2024, Defendants assured the Court that their
8 Medical Director would fix the broken mortality review process (Doc. 4795 at 21), but the
9 Medical Director position remained vacant from August 2024 until January 8, 2026, and,
10 as noted above, the experts amply support their opinion that the mortality review process
11 is still woefully insufficient. (*See, e.g.*, Doc. 5040 at 13-17 (“none of this changes [the
12 Monitors’] conclusion that [Defendants’] Mortality Review process is flawed.”).)

13 Furthermore, Defendants have consistently demonstrated a marked imbalance of
14 priorities. (Doc. 4761 at 15-16 (finding that HSD leadership focused on “monitoring and
15 enforcing standards that are not applicable to the staffing plan and are inappropriate when
16 introducing large-scale clinical change.”).) At every hearing for the last almost three years,
17 Defendants have touted improvements with Hepatitis-C and opioid use disorder. As noted,
18 there is some evidence that Defendants overrepresent their successes in these areas. The
19 Monitors assert that Defendants present their treatment of opioid/substance use disorder as
20 a success story, but “Defendants are compliant with only 3 of 7 requirements of the
21 Injunction and have made little progress (and in fact may have regressed) in the treatment
22 of Alcohol Use Disorder” and there are “seven ways in which treatment of TB at ADCRR
23 remains unsafe and dangerous.” (Doc. 5040 at 4.)

24 While any improvements are desirable, the continual emphasis on these few
25 improvements presents two significant problems. First, simply improving in two areas does
26 not ensure constitutional health care and mental healthcare for a substantial portion of the
27 prison population. Additionally, it is extremely concerning that these are among the only
28 improvements the Department continues to emphasize after pointing to these

1 improvements years ago. Indeed, the Court explained to the parties in its findings that “this
2 case is not about particular diseases. Rather the focus must be on the overall provision of
3 health and mental health care and whether there is a substantial risk of serious harm.”
4 Defendants tout their accomplishments with Hepatitis C and MOUD treatment but those
5 were included in the Permanent Injunction at Defendants’ behest and not because they
6 related to the Court’s findings. At the March 15, 2024 status conference, Director Thornell
7 extolled the “progress” Defendants had made by commenting on MOUD and Hepatitis C
8 treatments, unspecified progress in “the way that [Defendants are] approaching
9 accountability,” and a partnership with “external experts” at a consulting firm. (Doc. 4581.)
10 As the Monitors note in their supplemental October 4 Report, “most of the consultant’s
11 recommendations and attendant improvements, while worthwhile, do not relate to the
12 Court’s Injunction regarding health care, or do so in a very indirect manner.” (Doc. 5040.)

13 In contrast, the Monitors point to three areas with direct impacts on the prisoner
14 population that could have been implemented soon after the Injunction was issued, but still
15 have not been implemented. (Doc. 4968 at 25-26.) The Monitors demonstrate this in the
16 300-page report and, as reflected in the analysis of the mortality reports and many examples
17 of systemic healthcare failures identified in this Order, the Monitors also establish
18 Defendants have not discontinued the dangerous practice of having RNs independently
19 manage episodic patient problems and the practice has not only continued, but is supported,
20 by the EHR system that contains 45 protocols designed for independent practice by nurses,
21 demonstrating to the RNs that is still acceptable for them to provide primary care. (*Id.*)
22 Likewise, while the Injunction allowed RNs to independently manage a very small number
23 of approved conditions, LPNs were wholly barred by the Injunction from any independent
24 management, and yet the EHR still contains 35 protocols designed for independent practice
25 by LPNs. (*Id.*) The Monitors make clear after the Injunction issued, it would have been
26 relatively simple (and Defendants were advised and coached) to: (1) discontinue use of the
27 protocols within the EHR that allowed RNs and LPNs to manage patients independently
28 of provider involvement; (2) remove from the EHR the option of letting the nurse choose

1 an option not to contact a provider; and (3) identify errors in care of a deceased patient
2 during mortality reviews. (*Id.*)

3 Defendants have demonstrated a pronounced tendency to actively avoid leadership
4 and responsibility. There is ample evidence in the record that Defendants deflect
5 responsibility to their vendor, “saying essentially, ‘not me,’” in an “exercise of
6 accountability hot potato.” *Hinds County*, 2023 WL 1186925, at *11-*12 (finding lack of
7 leadership in those circumstances.) This was consistent throughout the Pilot, when
8 Defendants “would imply that certain tasks were NaphCare’s responsibility, but did not
9 require that NaphCare act on them.” (Doc. 4761 at 13.) This behavior “contribut[ed] to the
10 failure to fully implement the Pilot.” (*Id.*) In the opinion of the Monitors, there is a “marked
11 lack of clarity” regarding the responsibilities of Defendants and NaphCare and although
12 the Monitors raised this as critical to the success of the Pilot, their entreaties were ignored
13 by Defendants implying “that certain tasks were NaphCare’s responsibility, but did not
14 require that NaphCare act on them.” (*Id.* at 13.) The Monitors assert “[a]s a result of these
15 vagaries, multiple steps in implementation were skipped or dropped, contributing to the
16 failure to fully implement the Pilot.” (*Id.*) Despite the Court’s emphasis at multiple hearings
17 and in orders that increasing salaries was critical to fill positions, Defendants repeatedly
18 contended “[Defendants are] currently paying wages over the average wages provided in
19 the contract to get staffing levels to the appropriate level,” but NaphCare “is not paying
20 these wages.” (Doc. 4566 at 3.)⁵⁴ It bears repeating, Defendants were in violation of the
21 Injunction three months after it became effective, which begs the question of whether
22 Defendants negotiated the terms of the Injunction in good faith.⁵⁵

23 ⁵⁴ See Doc. 4566 at 3 (“Defendants provide an example that the current contract requires
24 certain mid-level providers be paid approximately \$106.33 per hour, but NaphCare is
25 paying these providers “between \$80.00 and \$95.51 per hour.”).

26 ⁵⁵ The Court expressly brought this to the attention of Director Thornell at many hearings
27 and, in March 2024, the Director promised to engage in solving it. But at the end of 2024,
28 100 contract positions still had not been filled. Amazingly, Defendants appeared to seek
praise in their subsequent filings for having only an additional 100 positions remaining.
This shows an abject lack of foresight because the staffing report approved by the Court
will require hiring significantly more staff.

1 When the Monitors taught HSD to convert a patient panel into primary care and
 2 mental health staffing using the staffing model tools, HSD indicated that “this should be
 3 NaphCare’s responsibility,” but made no efforts to discuss this with NaphCare, to have the
 4 Monitors work with NaphCare, or to otherwise “execute this first step in implementing the
 5 staffing model statewide.” (Doc. 4761 at 12) Even when Defendants’ staff person
 6 “developed an excellent program” for empanelment (assigning patients to providers),
 7 Defendants “indicated that empanelment ‘should be NaphCare’s responsibility,’” but took
 8 no steps “to discuss the need to empanel and assign patients with NaphCare, to teach
 9 NaphCare how to run the empanelment program, or to otherwise plan to execute this first
 10 step in implementing the staffing model statewide.” (*Id.*) All the while, Defendants persist
 11 in using NaphCare as an excuse for delay. (*See, e.g.*, Doc. 4553 at 7 (“[Defendants have]
 12 moved as quickly as [they] could given the challenges associated with having to effect
 13 changes through third-party vendors.”).)

14 Closely tied to Defendants’ tendency to shrug and insinuate the problem is their
 15 private healthcare contractor is their apparent need for constant micromanagement. In fact,
 16 as noted above, rather than proactively taking steps to enforce their contract with
 17 NaphCare, Defendants insisted the Court “enter an order intended to get [NaphCare] to
 18 increase health care salaries within the bounds of the current contract,” including ordering
 19 Defendants to order NaphCare to comply with their contract obligations. (Doc. 4566 at 3-
 20 4.) The Court was bewildered by such a suggestion, and at a March 15, 2024, status
 21 conference informed Defendants their relationship with NaphCare “is a contractual matter.
 22 If they have breached that contract, and you have made every effort to have them comply
 23 with the contract, then you can take the actions. You don’t need the Court for that. This is
 24 basic common law contract law, not something that I need to get involved with.” (Doc.
 25 4581 at 61.) Despite Defendants’ averment that they have sanctioned NaphCare through
 26 offsets from the contracted payment, as noted elsewhere in this Order, such efforts have
 27 been tepid and obviously ineffectual,⁵⁶ and their proposal that the Court violate the law
 28

⁵⁶ The Monitors write that “the 5 errors for which Defendants have sanctioned NaphCare

1 and intervene by ordering sanctions reflects a continued outsourcing of responsibility and
2 refusal to act independently.

3 It bears repeating that Defendants' Response to the Monitors' first Interim Report
4 complained the report did not provide "a 'how-to-guide,' much less a comprehensive plan,
5 on how [Defendants could] achieve compliance with the Injunction" and in particular, did
6 not provide "detailed guidance on how to achieve compliance." (Doc. 4553 at 2.) Sadly,
7 this suggests that when Defendants agreed to the terms of the Injunction, they had no
8 knowledge of what was required. And the joint agreement was only reached after three
9 intense months of negotiation. It is apparent Defendants chose not to take any initiative to
10 independently maintain compliance with the Injunction. Rather, Defendants apparently
11 secretly hoped for guidance and instructions from the Court. Such an undertaking would
12 have required substantial briefing, additional work and effort by the Court and Court
13 Monitors, and numerous status conferences, resulting in nothing other than a waste of time
14 and resources rendering the implementation of the Injunction nearly impossible.

15 At Oral Argument on September 10, 2025, Defendants repeatedly asserted their
16 "progress" and "commitment." (Doc. 4995.) But their focus on progress and commitment
17 disavows their substantial failures and pervasive violations that persisted nearly four years
18 after trial in 2021, and three-and-a-half years after the Court's Findings in 2022, and almost
19 three years after entry of the Injunction. If the alleged progress had been made, prisoners
20 would not still be suffering the adverse outcomes reflected in the Monitors' reports and the
21 Court's Orders. If progress had truly been made, the PCCM would have been implemented
22 immediately after issuance of the Injunction and not remain "at its infancy" as it is today.
23 (Doc. 5040 at 2.) And the many additional hours to implement the staffing plan would be
24 in place.

25 amount to a small percentage of the errors for which monetary sanctions could have been
26 levied. As such, we estimate that the \$1.4 million in monetary sanctions is a small fraction
27 of the monetary sanctions that ADCRR *could have* imposed on NaphCare for failures to
28 provide comprehensive healthcare services, misrepresentation or falsification of
information in the EHR, or other non-compliance with contractually required (and, by
extension, Injunction-required) performance." (Doc. 5040 at 3.)

1 In short, even if Defendants have some commitment to forthwith enforcing the
 2 Injunction, the record is rife with examples of their willful inability to institute
 3 constitutionally adequate healthcare in compliance with the Injunction. This factor favors
 4 receivership. *See Coleman*, 2025 WL 2475040, at *11 (where receiver-nominee identified
 5 multiple failures of leadership including not clearly identifying “who is ultimately
 6 responsible for delivery of constitutionally adequate mental health services”; “poor
 7 communication and lack of information” about what is required by the established
 8 remedies in this action; and “no uniform . . . mechanism for sharing best practices and
 9 lessons learned across institutions,” this factor weighed in favor of finding a receiver);
 10 *Nunez*, 782 F. Supp. 3d at 163–65 (Although the Monitoring Team praised the relatively
 11 new DOC commissioner for working actively with the Monitors and providing some basis
 12 for hope of future sustained change, such change was not sufficient to tip this factor against
 13 the appointment of a receiver because “even a strong Commissioner with sound intentions
 14 can only make limited progress where, as here, the ‘dedicated team’ of competent senior
 15 leadership required for reform has been lacking for years” and “dangerous and unsafe
 16 conditions in the jails have persisted well into the second year of the Commissioner’s
 17 tenure.”).

18 **5. Bad Faith or Repeated Failure to Implement Changes**

19 Defendants assert there is no bad faith displayed by their current leadership and
 20 maintain they are committed to achieving compliance with the Injunction and delivery of
 21 constitutionally adequate healthcare.

22 However, instead of actually engaging with the Monitors; embracing and
 23 implementing their recommendations and complying with Court rulings, Defendants have
 24 spent most of their time attacking the Monitors and their methodologies, with no
 25 evidence—just a “difference of opinion”—to support their ad hominem attacks.⁵⁷ Again, it

26
 27 ⁵⁷ For example, when the Monitors requested the appointment of Ms. Donna Strugar-
 28 Fritsch as a Monitor to assist in the implementation of the staffing plan, Defendants sought
 to prevent her appointment and argued, in spite of her years of experience in health care,
 corrections, government agencies, and the implementation of organizational changes in

1 cannot be overstated that Monitor Dr. Marc Stern was the same expert who testified in
2 hearings before Magistrate Judge David Duncan with criticisms of Defendants' healthcare,
3 but Defendants welcomed his appointment as an expert to help draft and monitor the
4 Injunction. Moreover, not until the Motion for Receiver was filed did Defendants officially
5 or unofficially provide the Monitors or the Court in writing, or otherwise, with specific,
6 detailed objections to the Monitors' opinions and direction. Now, however, Defendants
7 have offered abundant disagreements, differences of medical opinions, and criticisms of
8 the Monitors. This is entirely inconsistent with the Court's experiences with the Monitors,
9 who have consistently and patiently explained their methodologies and have shown ample
10 latitude and understanding in their recommendations, acknowledging the difficult hurdles
11 faced by Defendants in making the changes required by the Injunction. The experts, like
12 the Court, have without exception demonstrated that the main concern is that the prisoners
13 in the custody of the State of Arizona receive constitutional healthcare. It is alarming that
14 instead of sharing that concern and working with the Monitors, Defendants have engaged
15 in unproductive and distracting litigation tactics.

16 The Monitors' purpose as defined by the parties and the Court was to monitor
17 Defendants' compliance with the Injunction: the data and methodology that support their
18 opinions are consistent with that purpose. The parties agreed "reports from the experts will
19 help speed the remedial process by acknowledging areas of compliance with the Injunction
20 and by bringing attention to areas in need of improvement," and "the experts' opinions are
21 critical because they are independent, neutral, and are based on expertise that the parties
22 themselves lack." (Doc. 4507 at 5-6.) Thus, Defendants' arguments in opposition to the
23 Monitors' comments, opinions, and direction, made for the most part for the first time and
24 after the Motion for Receiver was filed, reflect significantly their disagreement and
25 dissatisfaction with the requirements of the Injunction. Further, Defendants' objections to
26 the staffing plan submitted by Ms. Strugar-Fritsch largely amount to objections to the

27

medical operations and her key role in developing the staffing plan, Ms. Strugar-Fritsch
28 lacked the "multi-faceted expertise . . . to play the most constructive role possible." (Doc.
4976.)

1 Injunction. After years of litigation, to quarrel so fixedly with the Injunction, which they
 2 helped draft, and to which they steadfastly agreed casts serious doubt on Defendants’
 3 averments of good faith. And it reflects a profound misunderstanding of the harm their
 4 conduct has caused over the past decade.

5 The staffing Pilot provides a particularly salient example: The Court declared in the
 6 Injunction “the core issue is that staffing levels are so inadequate that the provision of
 7 constitutionally mandated care is impossible.” (Doc. 4335 at 21.) Despite Defendants’
 8 acknowledgement that “the pilot is necessary to provide important refining information for
 9 the staffing model and new model of care being developed” (Doc. 4686 at 2), their
 10 participation in the Pilot vanished after it was approved. Throughout the Pilot, Defendants
 11 argued with the requirements,⁵⁸ failed to comply with the necessary staffing provisions,
 12 provided minimal and inaccurate data, and implemented fewer than half of the enumerated
 13 steps and activities necessary for the Pilot. (*See generally* Doc. 4761.)

14 As noted above, the Pilot was to be implemented at two sites, housing only 8% of
 15 Defendants’ prisoner population, but Defendants unilaterally ended the pilot at one of the
 16 two sites. Plaintiffs point out that “[t]he issue of space to accommodate new clinical staff
 17 and their patients was raised at the very first pilot meeting on July 8,” and again in
 18 September, “HSD reported that space modifications had been approved, budgeted, and
 19 would be complete within 90 days,” but Defendants, in their response to a draft of the
 20 report, disavowed knowledge of those comments and wrongly asserted “[t]he pilot never
 21 contemplated building additional space and should not be contingent on building additional
 22 space,” despite the Injunction’s requirement that Defendants “provide sufficient space” for
 23 healthcare delivery. (Doc. 4410 at 11-12 §§ 1.6-1.7.)

24 The HSD PCCM Team did not hire the required psychology associate, and the HSD
 25 Mental Health Director left during the Pilot. During three leadership meetings, the
 26 Monitors conveyed an urgent need for the Monitors to teach HSD’s newly hired mental

27 ⁵⁸ (*See, e.g.*, Doc. 4761 at 7 (“in its feedback to a draft of this report, with regard to
 28 requirements about the use of registry staff for the pilot, Defendants noted, ‘These were
 impractical requirements from the beginning.’”).)

1 health director about the Primary Therapist model, new clinical expectations for mental
 2 health care, and the staffing model for the mental health care Pilot, but they received no
 3 response from HSD. (Doc. 4761 at 12.) The Monitors noted that “HSD leaders’
 4 participation in Pilot activities waned throughout the pilot and [they] did not see any
 5 evidence of HSD leaders’ attempting to invigorate the HSD PCCM Team to meet the work
 6 plan objectives or hold them to any expectations or accountability for doing so.” (Doc.
 7 4761 at 15-16.)

8 Despite the Injunction’s terms as ordered by the Court that the staffing plan be
 9 implemented statewide after the Pilot, Defendants treated the Pilot as an incidental,
 10 insignificant, optional activity and the subsequent implementation of the plan as an unlikely
 11 potentiality. Although Defendants know that the PCCM must be implemented at all
 12 complexes (in 45 units of 9 complexes) pursuant to the Injunction, Defendants’ HSD
 13 refused to respond to the Monitors’ “numerous attempts to remind them that they must
 14 begin this work in order to comply with the Injunction and the Court’s orders.” (*Id.* at 11.)
 15 This failure is inexplicable and damning.

16 The Monitors reported that, in response to a draft of the Monitors’ first Interim
 17 Report, Defendants suggested changing the phrase “experience from the pilot will inform
 18 amendments to the final staffing plan that will improve the outcomes of the model as it is
 19 implemented across ADCRR” with “experience from the pilot will inform amendments to
 20 the final staffing plan that will improve the outcomes of the model *if* it is implemented
 21 across ADCRR” and to adjust the statement that the Pilot is also intended to enable HSD
 22 clinicians to “train and support other units throughout ADCRR complexes as they
 23 implement the new model” to say that the pilot is intended to enable HSD clinicians to
 24 “train and support other units . . . *if* they implement the new model *in the future*.” (Doc.
 25 4681 at 1.) In short, Defendants were exclusively in control of implementing this vital part
 26 of the Injunction and made no effort, or refused, to do so, causing significant repercussions,
 27 not only in the implementation of the Pilot, but for a state-wide implementation of the Pilot.

28 Defendants’ regular overstatement of their “progress,” intransigence regarding key

1 aspects of compliance, and reporting of inaccurate data⁵⁹ reinforces the finding of bad faith
 2 and repeated failure to implement changes. In their Response to the Monitor’s Third
 3 Interim Report, Defendants assert “the Department has implemented the Patient Centered
 4 Care Model (PCCM) at nine units across different complexes as part of the statewide roll
 5 out.” This is flat wrong in that “at most units, that implementation is [in] its infancy,” and
 6 critical components of the PCCM are not yet in place at all facilities, including assigning a
 7 primary therapist and/or primary care provider to every patient on the caseload and having
 8 the primary therapist or provider actually function as such. (Doc. 5040 at 2.) Defendants
 9 emphasize some modest successes in disease-specific areas, such as substance use
 10 disorders and treatment of tuberculosis, and yet “Defendants are compliant with only 3 of
 11 7 requirements of the Injunction . . . in the treatment of Alcohol Use Disorder” and the
 12 Monitors have identified seven “ways in which treatment of TB at ADCRR remains
 13 unsafe”

14 Finally, as required by the Injunction and by the Court, and in countless other
 15 instances, by the Monitors, Defendants have been urged, ordered, advised, and coached to
 16 end the practice of nurse-driven care. (*See, e.g.* Doc. 4410 § 1.11, 7.4.7 (“LPNs and
 17 Behavioral Health technicians shall not independently assess prisoners or initiate a plan of
 18 care or treatment,” “The initial care provider shall be the prisoner’s primary care medical
 19 provider,” “Pursuant to prisoner-specific direction provided by the medical practitioner,
 20 RN may provide initial care for a limited number of conditions”)); (Doc. 4637 at 5 (“Let
 21 the Court emphasize what is obvious, nurse-driven care is over.”)); (Doc. 4335 at 44
 22 (“Using nurses as the first line, and often last line, for providing care is medically
 23 unacceptable.”).) Despite this oft-repeated refrain, Defendants continue the practice.
 24 Indeed, Defendants assert that this alarming, continued use of RNs to provide initial care
 25 is acceptable because in the end “providers review and sign off on nursing protocols.”
 26 (Doc. 4973-8 at 7.) This reads as if Defendants are bereft of an understanding of the

27
 28 ⁵⁹ *See supra* note 44 (noting “Defendants report that they currently engage 15.3 FTE staff
 physicians. In fact they only engage no more than 11 FTE.”)

1 requirements of the Injunction, which they jointly drafted, requiring implementation of the
 2 PCCM. And it does not reflect a good faith effort to reach the minimum requirements of
 3 constitutionally adequate healthcare.

4 It is plain that conditions remain unconstitutional after “years of supervision and
 5 support.” *See Hinds County*, 2023 WL 1186925 at *12. Regardless of assurances of good
 6 faith, Defendants have repeatedly failed to implement necessary changes as directed by the
 7 Court and the Monitors, both throughout the lengthy history of this case and since the
 8 issuance of the Injunction. Accordingly, this factor favors receivership. *See, e.g., Nunez*,
 9 782 F. Supp. 3d at 165 (the key question in deciding this factor is whether the
 10 unconstitutional conditions fall below the constitutional minimum despite years of
 11 supervision and support by the Monitor and his team.”) (internal quotation omitted.)

12 **6. Waste of Resources**

13 Plaintiffs assert, as the Court has previously observed, the amount spent on this
 14 litigation is astronomical, and argue with a receiver, resources will be properly invested
 15 into making changes needed to improve healthcare and, ultimately end this case.

16 In Response, Defendants assert that they are “devoting substantial resources to
 17 complying with the Injunction and . . . achieving measurable success.” (Doc. 4818 at 21.)
 18 Conversely, at the same time, for almost three years, they have complained they do not
 19 have the resources to fully engage in complying with the Injunction. Defendants assert that
 20 the appointment of a receiver will waste resources, pointing to the increase in the California
 21 Department of Corrections’ spending and decline in prisoner population and the cost of the
 22 *Plata* receivership.

23 Defendants’ argument is conclusory as Defendants do not proffer an estimated cost
 24 of a receiver. There will be costs for improvements to the healthcare system, but the entire
 25 point of almost 14 years of litigation and the remedy for many years of constitutional
 26 violations is to improve the healthcare system. As such, Defendants cannot use the cost of
 27 improvements already required under the Injunction to oppose the appointment of a
 28 receiver on the grounds of expense.

Moreover, Defendants’ arguments based on the California Department of Corrections receivership are unavailing and ignore key facts: there, the Receiver has delegated oversight of the medical program at 31 of 35 institutions back to the Secretary as of August 2025, the decline in prisoner population was necessary for achievement of a remedy, and healthcare has been significantly improved under the receiver. *California Correctional Healthcare Services Fact Sheet*, at <https://cchcs.ca.gov/factsheet/>, permalink, <https://perma.cc/T7ED-ZPJY>; Gabriel Petek, Legislative Analyst’s Office, *Overview and Update on the Prison Receivership* (Nov. 2023), at <https://lao.ca.gov/Publications/Report/4813>.

Defendants have not demonstrated that a receivership would be a waste of resources, but there is certainly evidence that resources will continue to be wasted in the absence of a receiver. Defendants spend more than \$1 billion per year, and millions of dollars towards inmate healthcare. Defendants have proven completely incapable of reaching constitutional compliance, resulting in more than a decade of litigation without appreciable effect on the provision of healthcare. Allowing this to continue would waste enormous sums of money in compounded costs of ineffective care and litigation costs that do nothing to improve healthcare conditions.⁶⁰ And Defendants contract with NaphCare to provide healthcare to inmates, paying upwards of \$300 million a year, but it makes little effort to enforce NaphCare’s obligations.⁶¹ As noted, the sanctions that have been imposed are sparse, in the form of “offsets” from the contractual amount and have totaled approximately

⁶⁰ Defendants have been ordered to pay \$3,192,448.38 in attorneys’ fees and costs, \$2,545,000.00.00 in contempt sanctions, \$4,186,940.00 in payments for the Monitors’ work, and \$9,140.00 in appellate filing fees. (See, e.g., Docs. 2902, 3245, 3576, 3841, 2898, 3861, 537, 1817, 1932, 1953, 2444, 2838, 2935, 2936, 2937, 2944, 2957, 3106, 3272, 3338.) Moreover, the attorneys’ costs and fees of both Parties are in addition to the fees and costs reflected on the Court’s docket and the Court’s time and resources. In short, the cost to taxpayers has been enormous.

⁶¹ The contract provides for sanctions “including but not limited to monetary sanctions, suspension, refusal to renew, or termination of the contract” and explicitly states Defendants may impose immediate monetary sanctions, “cure notice” monetary sanctions, and performance offsets for violations of contractual Performance Measures. (Doc. 4507-1 at 41.)

1 \$1,424,900. Absent the drastic measure of imposing a receivership, Defendants will
2 continue to expend funds on inefficient and unconstitutional care.

3 The evidence before the Court shows that if the healthcare system is brought into
4 compliance with the Injunction, the healthcare system will run more efficiently and waste
5 less resources. Throughout this litigation, the Monitors have documented how denying
6 prisoners a constitutional level of care not only harms the prisoners but is ultimately a
7 massive waste of resources within the prison and to the State of Arizona. In discussing
8 deaths that were, at least, contributed to by violations of the Injunction, the Monitors
9 document numerous instances where appropriate healthcare would have saved practitioner
10 time and money. (*See, e.g.*, Doc. 4968 at 6, 12 (proper diagnosis of a urinary tract infection
11 would have saved patient from emergency trip to the hospital; telehealth visits and nurse-
12 led triage led to dangerous treatment of patient with complicated medical history and
13 allowed his unstable heart condition to be seen as stable; urgent request for catheter ignored
14 for three months until patient was already hospitalized; sleep apnea evaluation delayed for
15 a year when the patient ultimately died; delay of review of specialist medical records for
16 months; patient never offered a flu shot in violation of Injunction and developed flu that
17 likely contributed to his death.).)

18 Defendants also do not take accountability for these failures, instead arguing that
19 certain *parts* of the Injunction were complied with, showing a deliberate misunderstanding
20 of the vision of the Injunction. (*See, e.g.*, Doc. 4968 at 16 (Defendants argued that patient
21 who committed suicide was seen multiple times, but the Monitors note that those sessions
22 were conducted by different psychology associates, no primary therapist was assigned,
23 more than half occurred at cell-front, and despite clear signs of suicide risk, none of the
24 four psychology associates assessed dynamic suicide risk factors); *id.* at 18 (Defendants
25 argued that a 65-minute encounter constituted an adequate initial health assessment when
26 the encounter was actually an Intake Assessment for Max Custody Placement); *id.* at 18-
27 19 (Defendants' arguments demonstrate confusion in difference between psychiatrist and
28 therapist.).)

1 Additionally, in mid-2024, Plaintiffs requested the Court order Defendants to hire
 2 an individual or individuals with significant health care management experience to assist
 3 Defendants in reforming the current system, but Defendants claimed such an order would
 4 be “duplicative and unnecessary” because Defendants “already engaged . . . a nationwide
 5 correctional consulting and management firm” and anticipated the firm’s recommendations
 6 for “system-wide improvement.” (Doc. 4998 at 4.) Director Thornell asserts that this report
 7 was necessary “for a comprehensive, systemwide review of ADCRR’s programs and
 8 systems as part of [his] vision for redefining and implementing modern correctional
 9 policies and practices in Arizona, and also to address the constitutional deficiencies
 10 identified in this Court’s 2022 order.” (Doc. 4998-3 at 17.) The Monitors opine that “most
 11 of the consultant’s recommendations and attendant improvements, while worthwhile, do
 12 not relate to the Court’s Injunction regarding health care, or do so in a very indirect
 13 manner.” (Doc. 5040 at 4.) This undermines Defendants’ initial contention that providing
 14 Defendants with help from an individual with significant health care management
 15 experience to assist Defendants in reforming the current system was duplicative and
 16 unnecessary. Indeed, the Monitors were already providing ample recommendations for
 17 “system-wide improvement” to no avail, making engagement of the consulting firm itself
 18 the “duplicative and unnecessary” expense. (Doc. 4998 at 4.)

19 In short, Defendants’ continued violations of the Injunction and their conduct
 20 throughout this litigation are contributing to a waste of resources and there is no showing
 21 that appointment of a receiver would result in waste of resources. *See Coleman*, 2025 WL
 22 2475040, at *11–12 (“It cannot reasonably be disputed that the amount of money being
 23 spent on the contentious litigation that has plagued remediation in this action for more than
 24 a decade is a significant waste of public resources, given that the litigation has not effected
 25 any material change in the court-ordered remedy but rather only served to delay
 26 implementation and the end of federal court oversight.”).

27 **7. Relatively Quick and Efficient Remedy**

1 Defendants argue that appointment of a receiver would not be quick and efficient
 2 and would “dramatically increase the cost of compliance and cause further delay” (Doc.
 3 4818 at 2.) Defendants also cite the appointment of a receiver in the California Department
 4 of Corrections as an example of a receivership that was purportedly inappropriate and not
 5 quick or efficient. However, as noted above, and in contrast to Defendants’ purported
 6 efforts, the receivership in California has had marked success.⁶²

7 This factor does not ask the Court to consider whether appointment of a receiver
 8 would be quick and efficient, but whether appointment would be *relatively* quick and
 9 efficient. This determination must be evaluated against the backdrop of this case. *See, e.g.,*
 10 *Plata*, 2005 WL 2932253, at *31 (“the speed of reform must be judged relative to the scale
 11 of the project.”.) Defendants first promised to achieve constitutional compliance in October
 12 2014. As amply detailed in this Order, Defendants continue to argue about the underlying
 13 requirements of the Injunction rather than bringing the medical and mental healthcare
 14 systems into constitutional compliance.

15 Even since the issuance of the Injunction, Defendants have failed for more than two
 16 years to implement relatively simple solutions.⁶³ Here, given more than 11 years of delays
 17 and the same arguments and non-compliance, the Court finds that appointing a receiver
 18 that is willing to implement the recommendations of the neutral experts would be relatively
 19 quick and efficient. *See Coleman*, 2025 WL 2475040, at *12 (finding “quick and efficient
 20 remedy” factor favored receivership because estimated 5-7 year receivership must be
 21 evaluated against “long-running remedial phase of th[e] case” “with some progress . . . but
 22

23 ⁶² Progress was initially slow under the receiver in California. In 2011, the Supreme Court
 24 found that unless overcrowding was addressed, the receiver would be unable to achieve a
 25 remedy. Once the CDCR reduced the state prison population to acceptable levels in 2015,
 26 progress moved much more quickly. Between 2015 and 2017, the receiver returned
 27 authority over 16 prisons to the state. *See California Correctional Healthcare Services*
 28 *Fact Sheet*, (Aug. 2025), <https://cchcs.ca.gov/factsheet/>, permalink,
<https://perma.cc/T7ED-ZPJY>).

⁶³ *See generally supra* (Noting relatively simple measures that could have been taken and
 to resolve issues with the refusal process and to make the shift away from inappropriate
 nurse-driven care, but were not).

1 no durable end otherwise in sight.”); *Nunez*, 782 F. Supp. 3d at 165 (in evaluating quick
 2 and efficient remedy, finding in favor of receivership because “steady and much more rapid
 3 progress is possible under the guidance of a well-structured receivership.”).

4 **8. Balance of Factors**

5 It is an unavoidable conclusion that the balance of factors favors a receivership in
 6 this action. The Court is cognizant that the appointment of a receiver is an extraordinary
 7 remedy that should be reserved for the most extreme circumstances. From the evidence
 8 compiled over the past decade, the Court is convinced the situation at ADCRR is such an
 9 extremity.

10 In their opposition to the appointment of a receiver, Defendants emphasize *District*
 11 *of Columbia v. Jerry M.*, a case in which the District of Columbia Court of Appeals
 12 reviewed the appointment of a receiver over the education system at the Oak Hill center
 13 for detained and committed children. The court concluded that “while the District’s history
 14 of compliance with the orders of the court leaves much to be desired, we are not persuaded
 15 that the record reveals a sufficient basis for the imposition of this remedy of last resort
 16 under the circumstances existing at the time of the entry of the order.”

17 *Jerry M.* presents a factual situation markedly different from that existing here.
 18 There, a receiver was appointed “just eight weeks after” the newly appointed
 19 superintendent of the District of Columbia Public Schools had agreed to take responsibility
 20 for education at the Oak Hill School and just days into the new school year, with “no notice
 21 that [the Court] intended to judge [the Superintendent] based on conditions during the first
 22 week of school.” *Jerry M.* at 1212. DCPS had developed and presented a plan for running
 23 the facility in compliance with requirements. *Id.* at 1210. A new governmental body, the
 24 District of Columbia Financial Responsibility and Management Assistance Authority, had
 25 been created and issued a Directive taking various steps to address problems with public
 26 schools. *Id.* at 1210, 1213.

27 Here, Defendants argue that “the Department’s current leadership has been at the
 28 helm for only a couple years” and, like the newly appointed Superintendent in *Jerry M.*,

1 “must be given an opportunity to ‘turn the tide’ before additional relief could be warranted”
2 (Doc. 4818 at 17), but this opportunity has been given and proved fruitless. Here, the long
3 history of this case has made evident that ADCRR’s healthcare is deeply, systemically
4 flawed. New leadership already in place for two years has failed to make headway in
5 rooting out systemic issues or offer any concrete plan for achieving compliance.

6 Defendants are correct that alone, a historical failure to fully comply may not
7 warrant the extraordinary remedy of a receivership. In reversing the order granting a
8 receivership in *Jerry M.*, the court explained “the trial court relied principally upon only
9 one of the factors essential for a reasonable exercise of its discretion” when it “focused
10 upon the history of the District’s failure to comply fully with the court’s requirements.”
11 *Jerry M.* at 1213. This historical failure was “a compelling consideration,” but could not
12 be “the only factor for consideration.” But here, the Court has not relied solely, or
13 predominantly, on any one factor, but rather has conducted a holistic review.

14 The Court has exercised restraint for much of this litigation, to the point that
15 anymore tolerance of unconstitutional healthcare becomes judicial indulgence.
16 Defendants’ healthcare delivery system continues to cause and threaten grave harm; the
17 Court has attempted to resolve the issues through less extreme measures; Defendants have
18 consistently dragged their feet, delayed, exploited ambiguity, and fought compliance at
19 every turn, making continued insistence on compliance ineffective; Defendants lack the
20 leadership capacity to complete the necessary systemic changes to achieve compliance;
21 Defendants’ repeated failures, repeated attacks upon the Injunction and the Monitors, and
22 need for constant micromanagement undermine their avowals of commitment and good
23 faith; resources are being wasted; and after fourteen years of litigation with little to change,
24 continuing to employ the same approach would be wildly inefficient with no indication
25 that improvement will accelerate. The Court finds no lesser measure will suffice to remedy
26 the pervasive constitutional violations present in Defendants’ healthcare delivery system.

27 **III. NARROWNESS OF THE REMEDY**
28

As in its issuance of the Permanent Injunction in 2023, the Court embraces the rule that the remedy imposed must be narrowly drawn, extend no further than necessary to correct Defendants' ongoing violations of Plaintiffs' constitutional rights, and be the least intrusive means necessary to correct and prevent violations. 18 U.S.C. § 3626(a)(1)(A.) The Court finds the appointment of a receiver over Defendants' healthcare and mental healthcare system is such a remedy.

IV. SCOPE OF ORDER:

Plaintiffs request that the Court "assign to the receiver all authority granted to the receiver in *Plata*, given the success of the receiver in that case." (Doc. 4795 at 30.) In Response, Defendants assert that the relief requested by Plaintiffs is too expansive "particularly considering a lack of history of the Department's current leadership being unwilling to institute change." (Doc. 4818 at 25-26.)

In determining the scope of a receiver's powers, the Court should ensure that the receiver's powers "cover only the scope of the constitutional violations" and should give necessary explanation and justification to support the scope of those powers. *Hinds Cnty.*, 128 F.4th at 639.

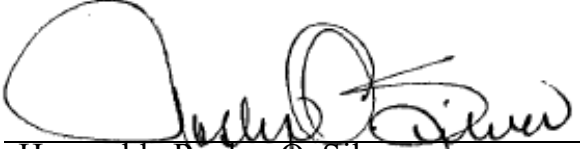
Although the Court is inclined to propose that the Receiver be given powers consistent with the Receiver in *Plata*, the Court will allow the parties and the Monitors to weigh in on the proposed powers before issuing a final order as to the powers of the receiver. Both the parties and Monitors must address whether the proposed powers cover only the scope of the constitutional violations

IT IS ORDERED Plaintiffs' Motion for a Receiver (Doc. 4795) is **GRANTED**.

IT IS FURTHER ORDERED within 60 days of the date of this Order, the parties and the Monitors shall submit a list of up to five candidates each to serve as the Receiver over medical and mental health care in Arizona state prisons. Objections shall be filed no more than fourteen days later, and responses shall be filed no later than seven days thereafter.

1 **IT IS FURTHER ORDERED** within thirty days of the date of this Order, the
2 Parties shall simultaneously file Motions setting forth the proposed duties, powers, and
3 authorities of the Receiver, addressing how each proposal will extend as far as but no
4 further than necessary to correct Defendants' constitutional violations.

5 Dated this 19th day of February, 2026.

6
7
8 
9 Honorable Roslyn O. Silver
Senior United States District Judge

Section	Provision	Status	Description	Compliance
Medical Services	Injunction Provision 1.1 and 1.3	Non-compliant	All care and the documentation supporting that care, delivered during a medical encounter (primarily face-to-face encounters), in response to an inquiry from a nurse or patient, during a chart review or chart-based triage decision, or upon receipt of results from a test, report from a consultant, other external health record, shall be clinically appropriate including scheduled follow-up in an appropriate timeframe when applicable. Settings include, but are not limited to, those described in the subsections of these provisions below.	
Medical Services	Injunction Subprovision 1.1a	Non-compliant	Emergent care	Doc. 4968 at 46 (Defendants using flawed methodology even though Monitors consistently provide feedback since November 2023 that data collection is flawed.)
Medical Services	Injunction Subprovision 1.1b	Non-compliant	Urgent care	Doc. 4968 at 48 (Defendants self-assess 96% compliance with urgent care provision in sub provisions 1.1b of Injunction, but Monitors assess as closer to 33%);
Medical Services	Injunction Subprovision 1.1c	Non-compliant	Non-urgent, episodic care	Doc. 4968 at 49 (Defendants self-assess 79% compliance with non-urgent, episodic care in subprovision 1.1c of Injunction, but Monitors calculate 35% compliance)

Medical Services	Injunction Subprovision 1.1d	Non-compliant	Chronic care	Doc. 4968 at 52 (Defendants self-assess 86% compliance with chronic care provision in section 1.1d of Injunction, but Monitors assess closer to 35%)
Medical Services	Injunction Subprovision 1.1e	Non-compliant	Inpatient care	Doc. 4968 at 53-57 (Monitors assess noncompliance with inpatient care provision in 1.1e, but find percentage is inappropriate methodology)
Medical Services	Injunction Subprovision 1.1f	Non-compliant	Off-site specialty referrals	Doc. 4968 at 58-59 (Monitors assess non-compliance with off-site specialty referrals provision in section 1.1f of Injunction and that percentages do not fully capture methodology, Defendants self-assess at 96% compliance, but Monitors assess 65% compliance.);
Medical Services	Injunction Subprovision 1.1g	Non-compliant	(Additional reference 9.1) Action taken on post-hospital, post-emergency room, or specialist recommendations. This includes that the practitioner shall adopt and perform recommendations from outside providers unless a clinically appropriate basis exists to alter or forgo the off-site recommendations.	Doc. 4968 at 60 (Defendants self-assess 84% compliance with 1.1g of Injunction regarding action taken on post-hospital, post-emergency room, or specialist recommendations and that percentages do not fully capture methodology, Defendants self-assess at 96% compliance, but Monitors assess 10% compliance.)

Medical Services	Injunction Provision 1.22	(see individual sub-provisions below)	Orders from health care staff in the outpatient and inpatient arenas shall be completed within the timeframe ordered. This includes, but is not limited to, those orders described in the subsections of this provision below.	
Medical Services	Injunction Subprovision 1.22a	Non-compliant	On-site diagnostic tests	See Doc. 4968 at 62-63 (Monitors find non-compliance with on-site diagnostic tests provisions in section 1.22a of the Injunction and that Defendants use improper methodology regarding compliance)
Medical Services	Injunction Subprovision 1.22b	Non-compliant	Off-site diagnostic tests	Doc. 4968 at 64-65 (Monitors find non-compliance with off-site diagnostic tests provisions in section 1.22b of the Injunction)
Medical Services	Injunction Subprovision 1.22c	Non-compliant	On-site follow-up visits with nurses or practitioners	Doc. 4968 at 66-67 (Monitors find non-compliance with on-site follow-up visits with nurses or practitioners provision in section 1.22c of the Injunction and include backlog chart showing extremely back-logged appointments)

Medical Services	Injunction Subprovision 1.22d	Non-compliant	(Additional reference 8.1) Off-site visits with specialist	Doc. 4968 at 68-72 (Defendants self-assess 28% compliance with 1.22d of Injunction regarding offsite visits with specialists, but Monitors assess probably much worse given certain data manipulation. Monitors also address substantive issues outside of percentages)
Medical Services	Injunction Provision 1.21a (a.k.a. "1.21")	Non-compliant	All cancellations of patient-initiated visits shall be made directly to a health care professional by telephone, tablet, video, face-to-face, or in writing by the patient. If a patient will not voluntarily displace, health care staff will go to the patient's location.	Doc. 4968 at 73-74 (Defendants self-assess 76% compliance with 1.21a of the Injunction regarding cancellation of patient-initiated, but Monitors assess 60% compliance)
Medical Services	Injunction Provision 1.21b (a.k.a. "1.1,1.21a")	Non-compliant	All refusals of provider-initiated on-site medical visits are made by telephone, video, or face-to-face with an RN or practitioner, within three days after the appointment. If a patient will not voluntarily displace, health care staff will go to the patient's location.	Doc. 4968 at 75 (Monitors find non-compliance with refusals of provider-initiated on-site medical visits in section 1.21b of the Injunction)
Medical Services	Injunction Provision 1.21c (a.k.a. "1.1,1.21b")	Non-compliant	All refusals of off-site health visits are made by telephone, video, or face-to-face with an RN or higher at the time of the appointment. If a patient will not voluntarily displace, health care staff will go to the patient's location.	Doc. 4968 at 76-77 (Monitors find non-compliance with off-site health visits in section 1.21c of the Injunction)

Medical Services	Injunction Provision 1.23	Non-compliant	Patients shall be informed in a timely manner of diagnostic test results.	Doc. 4968 at 78-79 (Defendants self-assess 88% compliance with 1.23 of the Injunction regarding timely conveyance of diagnostic test results, but Monitors assess 76% compliance)
Medical Services	Injunction Provision 5.1	Non-compliant	For patients with any medical conditions and identified treatment providers in the community, if the patient consents, health care staff shall send each provider relevant health care information prior to the patient's release. This includes, at a minimum, a problem list, list of active medications, current symptoms, functional impairments, a summary of relevant care provided during incarceration, any necessary care or follow-up care, one or more points of contact if a community provider requires further information. The patient's health record shall contain documentation of the above information that was provided, when, and to whom.	Doc. 4968 at 80-81 (Defendants self-assess 96% compliance with 5.1 of the Injunction regarding healthcare information, but Monitors assess 20% compliance)
Medical Services	Injunction Provision 7.4.1	Compliant	Patients shall be given on a daily basis an opportunity to indicate their need to be seen for a medical clinic appointment at the next available clinic by one of the following mechanisms, depending on their living situation, freedom of movement, and access to electronics: affixing their name to a time slot on a paper list maintained on the living unit or in the medical unit; affixing their name to a time slot on an electronic list via tablet or kiosk; informing the nurse who conducts daily (or more frequent) welfare checks on that unit; an effective paper-based system in the event of temporary non-functioning of the electronic system.	
Medical Services	Injunction Provision 7.4.2	Unable to determine compliance	A reminder of the following rule is communicated via the medium the patients use to make requests (e.g., a statement placed on the paper or electronic sign-up list): Patients should only use the non-urgent system if they have a non-urgent need. Patients with urgent or emergent needs should notify a staff member.	

Medical Services	Injunction Provision 7.1	Non-compliant	An RN or higher credentialed professional shall conduct an intake screening within four hours of a patient's arrival or, alternatively, a rapid screening shall be conducted immediately upon arrival, but the intake screening by an RN shall be conducted as soon as possible and before the patient proceeds to housing. If the rapid screening is conducted by a professional of lesser credential than an RN (e.g., LPN, certified medical or nursing assistant), then the screening shall not include a clinical assessment, and any abnormal response found by the LPN or similar staff shall result in immediate consultation with an RN (or higher credentialed professional.)	Doc. 4968 at 84-85 (Monitors find non-compliance with timely intake screening in section 7.1 of the Injunction)
Medical Services	Injunction Provision 7.2	Non-compliant	A medical practitioner shall complete a history and physical examination of each patient by the end of the second full day after a new patient arrives in ADCRR.	Doc. 4968 at 86 (although Monitors agree with 96% compliance with 7.2 of the Injunction regarding complete history and physical exam, not achieving full compliance is dangerous and may be errors in data)
Medical Services	Injunction Provision 7.4.6	Non-compliant	All non-urgent/non-emergent care at the request of a patient shall be completed in a reasonable time.	Doc. 4968 at 87-88 (Monitors find non-compliance with all timely non-urgent/non-emergent in section 7.4.6 of the Injunction noting that the data is erroneous, and Defendants are not performing this part of the Injunction properly)

Medical Services	Injunction Provision 7.4.7a/b	Non-compliant	The initial care for non-urgent/non-emergent care and chronic care shall be provided by the patient's primary care provider (PCP) with the exceptions noted below. (1) The care may be provided by another medical practitioner or health care practitioner as directed by the PCP as clinically appropriate. (2) If the PCP is not on the premises or conducting telehealth visits at the time, the care may be provided by another medical practitioner of the same or higher credential. (3) Pursuant to patient-specific direction provided by the medical practitioner, RN may provide initial care for a limited number of conditions that are simple, rarely serious, rarely confused with serious conditions, and appropriately treatable with self-care and/or over-the-counter medications provided that the RN operates under clinically appropriate protocols approved by the Monitors.	Doc. 4968 at 89-92 (Monitors find non-compliance with PCP initial care in section 7.4.7a/b due to three systemic problems)
Medical Services	Injunction Provision 1.5	Non-compliant	Emergency response and care provided by custody staff shall be appropriate given the skill level and knowledge expected of custody staff.	Doc. 4968 at 93 (Defendants self-assess 85% compliance with 1.5 of the Injunction regarding emergency response and care by custody staff, but Monitors assess 50% compliance)
Medical Services	Injunction Provision 1.8a	Non-compliant	Emergency response equipment (Emergency Response Bag, Automated External Defibrillators ("AEDs"), oxygen) shall contain all items required by policy, all equipment shall be in working order, and all medications shall be unexpired.	Doc. 4968 at 94 (Defendants self-assess 86% compliance with 1.8a of the Injunction regarding emergency response equipment, but Monitors say there is no meaningful way to calculate a percentage performance, and there is evidence of non-compliance in 13 units)

Medical Services	Injunction Provision 1.8b	Non-compliant	Emergency Response Bag checklists shall reflect the equipment was checked daily and inventoried monthly. The checklists shall also reflect medications are within their expiration date and equipment is operational.	Doc. 4968 at 95 (Defendants self-assess 79% compliance with 1.8b of the Injunction regarding emergency response bag checklists, but Monitors say there is no meaningful way to calculate a percentage performance, but Monitors found that checklists were inaccurate and therefore non-compliant)
Medical Services	Injunction Provision 1.8c	Non-compliant	Staff shall complete and document all AED manufacturer recommended checks (e.g., daily, monthly, annual.)	Doc. 4968 at 96 (Defendants self-assess 94% compliance with 1.8c of the Injunction regarding AED manufacturer checks, but Monitors found that they were 94% compliant only where a few units actually have AED)
Medical Services	Injunction Provision 1.8d	Compliant	Naloxone (Narcan®) is required to be kept on every living unit or with every AED.	
Medical Services	Injunction Provision 7.5	Compliant	Build (or modify existing) living units to accommodate all patients requiring SNU housing, build the units with per-patient floor space consistent with Arizona's Medicaid agency (AHCCCS) requirements for similar populations, equip and staff the units to meet the assisted living needs of the SNU patients at the appropriate custody levels, and transfer all these patients to those beds. (Definition of SNU: elderly, physically disabled, or developmentally disabled, generally guided by the health/functional/physical needs criteria established by AHCCCS – see Pre-Admission Screening Tool)	

Medical Services	Injunction Provision 7.6.1	Non-compliant	A medical practitioner shall be contacted and collaborate on the creation of a care plan immediately upon a patient being admitted to the IPC.	Doc. 4968 at 100-01 (Defendants self-assess 75% compliance with 7.6.1 of the Injunction regarding collaboration of medical provider for IPC patients, but Monitors assess 30% compliance)
Medical Services	Injunction Provision 7.6.2	Non-compliant	An RN shall complete an admission nursing assessment immediately upon a patient arriving in the IPC.	Doc. 4968 at 102 (Defendants self-assess 75% compliance with 7.6.2 of the Injunction regarding nursing assessment upon arrival in IPC, but Monitors assess 65% compliance)
Medical Services	Injunction Provision 7.6.3	Non-compliant	A medical practitioner shall complete an admission history and physical within one calendar day of admission to the IPC for patients who are going to remain beyond 24 hours.	Doc. 4968 at 103 (Monitors assert no more than occasional compliance with 7.6.3 of the Injunction regarding completion of admission history and physical within one day of IPC admission)
Medical Services	Injunction Provision 7.6.4	Non-compliant	An RN shall complete an assessment in the IPC at the frequency ordered. The spacing of the assessments shall be clinically appropriate.	Doc. 4968 at 104 (Monitors assert non-compliance with 7.6.4 of the Injunction regarding RN completing an assessment in the IPC at the frequency ordered)

Medical Services	Injunction Provision 7.6.5	Non-compliant	The call buttons of all patients admitted to an IPC level bed are determined to be working on the day of admission and once per month. If a call button is not working health care staff shall perform a welfare check at least once per 30 minutes.	Doc. 4968 at 105-06 (Defendants self-assess 88% compliance with 7.6.5 of the Injunction regarding working call buttons on IPC beds, but Monitors could not perform assessment based on “frequency of careless or erroneous nursing documentation”)
Medical Services	Injunction Provision 8.4	Non-compliant	If Defendants or their healthcare vendor utilize categorical referral timeframes, e.g., “emergency,” “urgent,” “routine,” for which it applies default timeframes for completion of the referral, Defendants shall notify the Court of those categories and timeframes and shall notify the Court within fourteen days if any of those categories or default timeframes change.	Doc. 4968 at 107 (Monitors assert that Defendants added a category of referral time frames, but never notified the Court of this change or its meaning, even though this provision of the Injunction requires notification to the Court)
Medical Services	Injunction Provision 8.7	Non-compliant	If a practitioner orders, or informs a patient there will be an order for an off-site test or referral, but circumstances change and the order is modified or rescinded, the patient shall be informed within one month of the change.	Doc. 4968 at 108 (Monitors assess non-compliance with 8.7 of the Injunction requiring that patient be informed within one month of change to order for an off-site test or referral because form does not tell patients what was cancelled); Defendants self-assessed 94% compliance, but Monitors assessed 50% compliance)

Medical Services	Injunction Provision 9.2	Non-compliant	Patients returning from a hospital stay or emergency room visit shall be evaluated by an RN or higher prior to returning to their living unit. A discharge summary, physician report, or documentation of this information received via phone shall be available for this evaluation.	Doc. 4968 at 109-10 (Defendants self-assess 80% compliance with 9.2 of the Injunction with requirements for patients returning from ER and Monitors agree Monitors suggest tools to remedy ongoing violations)
Medical Services	Injunction Provision 10.5.4	Non-compliant	Patients with asthma who are at significant risk of serious respiratory impairment if they do not use their rescue inhaler immediately, shall be provided a rescue inhaler KOP. Exceptions may be made for patients living in a unit with 24-hour nursing and access to an emergency call button. Exceptions may also be made for patients where the practitioner can document a significant and serious penological need to prohibit a particular patient from having such an inhaler. This exception must be patient-specific.	Doc. 4968 at 111 (Monitors find Defendants non-compliance with 10.5.4 of the Injunction requiring rescue inhalers)
Medical Services	Injunction Provision 10.5.5	Non-compliant	Patients with diabetes who are at significant risk of hypoglycemia shall be provided a source of glucose KOP. Exceptions may be made for patients living in a unit with 24-hour nursing and access to an emergency call button.	Doc. 4968 at 112 (Monitors find Defendants non-compliant with 10.5.5 of the Injunction requiring KOP glucose for hypoglycemic prisoners)
Medical Services	Injunction Provision 10.5.6	Non-compliant	Patients prescribed rapid-delivery nitroglycerin for cardiac disease shall be provided the medication KOP. Exceptions may be made for patients living in a unit with 24-hour nursing and access to an emergency call button.	Doc. 4968 at 113 (Defendants self-assess 86% compliance with 10.5.6 of the Injunction regarding KOP nitroglycerin for patients with cardiac disease, but Monitors assess 83% compliance)

Medical Services	Injunction Provisions 11.1.1.1 & 11.1.8	Non-compliant	All patients are offered a screening blood test for HCV under opt-out conditions within a month of arrival.	Doc. 4968 at 114-15 (Defendants self-assess 100% compliance with HCV testing and opt-out in 11.1.1.1 & 11.1.8, but Monitors found that opt-out is not being enforced)
Medical Services	Injunction Provision 11.1.4	Non-compliant	All patients with HCV infection shall be placed on a single list prioritized according to a scheme that considers degree of fibrosis, relevant comorbidities, likelihood of transmitting infection to others in the prison, and release date.	Doc. 4968 at 116-18 (Defendants self-assess 100% compliance with 11.1.4 regarding prioritized list for HCV infections, but Monitors find that list is not being maintained in accordance with Injunction “in significant ways” and this continues despite that Monitors have identified these problems previously)
Medical Services	Injunction Provision 11.1.7	Non-compliant	All patients with HCV shall be offered education about HCV, whether they receive treatment or not.	Doc. 4968 at 119 (Monitors find non-compliance with 11.1.7 requiring HCV education for prisoners with HCV; Defendants self-assess 87% compliance)
Medical Services	Injunction Provision 11.1.5a	Non-compliant	All patients with newly diagnosed HCV are tested to determine if they have more advanced hepatic disease	Doc. 4968 at 120-21 (Monitors found greater compliance (96%) with 11.1.5a, requiring that HCV patients be tested for more advance hepatic disease, than Defendants self-assessed 88% compliance, but noted ongoing issues with informed consent for denial of treatment)

Medical Services	Injunction Provision 11.1.5b	Non-compliant	All patients with fibrosis scores of F3 or F4 will be offered treatment for HCV.	Doc. 4968 at 122-23 (Defendants self-assess 100% compliance with 11.1.5b requiring that patients with F3 or F4 fibrosis scores be offered treatment for HCV, but Monitors assess 91% compliance)
Medical Services	Injunction Provision 11.1.5c	Compliant	At least the following number of patients will begin treatment for HCV monthly using the current standard of care medications: 110 patients plus 70% of the number of newly admitted patients who tested positive for HCV during the previous month.	
Medical Services	Injunction Provision 11.1.6	Non-compliant	No patient who is released on their planned release date shall release without having been screened for HCV and if positive and they accept treatment, without having completed treatment except for those patients with markedly reduced life expectancy who would not be expected to benefit from treatment, or patients who cannot complete treatment within the timeframe of their incarceration and linkage to care in the community for continuation of treatment cannot be established despite a good faith effort or there is a documented informed refusal.	Doc. 4968 at 124 (Defendants self-assess 79% compliance with 11.1.6 regarding treatment for prisoners with HCV released during ongoing treatment, but there are significant, recognized errors in methodology)
Medical Services	Injunction Provision 11.2	Compliant	All newly admitted patients shall have a completed test for tuberculosis (skin test, blood test, or chest x-ray) by the end of the seventh full day after admission into the ADCRR system, unless the patient refuses.	

Medical Services	Injunction Provision 11.3.1	Non-compliant	All newly admitted patients shall be screened for, and if indicated then evaluated for, substance use disorder. Screening shall include assessment as to a history of opioid overdose.	Doc. 4968 at 127-29 (regarding 11.3.1 clinically appropriate evaluation after intake screening for substance use disorder (OUD), Monitors and Defendants agree on 100% compliance for screening, but Defendants self-assess 100% compliance with evaluations while Monitors assess 70% compliance due to five errors)
Medical Services	Injunction Provision 11.3.2	Compliant	All newly admitted patients shall be offered to have current Medication for Opioid Use Disorder ("MOUD") (buprenorphine, naltrexone) continued.	
Medical Services	Injunction Provision 11.3.3	Non-compliant	All pregnant or post-partum patients with diagnosed Opioid Use Disorder ("OUD") shall be offered to have current MOUD (buprenorphine, naltrexone, methadone) continued, or if not currently on MOUD, shall be offered to initiate treatment with buprenorphine or naltrexone.	Doc. 4968 at 131 (Monitors found Defendants non-compliant with 11.3.3 regarding treatment for pregnant or post-partem patients with OUD)
Medical Services	Injunction Provision 11.3.4	Compliant	All patients who have a documented history of opioid overdose or who upon assessment are determined to be at imminent risk of an opioid overdose, shall be offered MOUD with methadone, buprenorphine or naltrexone.	
Medical Services	Injunction Provision 11.3.5	Compliant	All patients offered treatment for HCV shall be evaluated for OUD and if found to have OUD, shall be offered MOUD with methadone, buprenorphine or naltrexone.	
Medical Services	Injunction Provision 11.3.6a/b	Non-compliant	Patients with OUD will be offered MOUD, including counseling, if appropriate. The Department will take the necessary steps to ensure that any patient transferring to another facility will not experience an interruption in MOUD, counseling, or alcohol treatment.	Doc. 4968 at 134-38 (Monitors find noncompliance with 11.3.6a/b requiring medication for patients with OUD and detail lack of leadership in roll-out)

Medical Services	Injunction Provision 11.3.6c/d	Non-compliant	Patients with Alcohol Use Disorder will be offered medication treatment and counseling if appropriate. The Department will take the necessary steps to ensure that any patient transferring to another facility will not experience an interruption in medication or counseling.	Doc. 4968 at 139 (Monitors find non-compliance with 11.3.6c/d requiring medication and counseling for patients with alcohol use disorder)
Medical Services	Injunction Provision 11.4	Non-compliant	Patients shall be offered all immunizations recommended by the CDC's Advisory Committee on Immunization Practices.	Doc. 4968 at 140 (Monitors find non-compliance with 11.4 requiring offering vaccinations)
Medical Services	Injunction Provision 2.1.3	Non-compliant	Following a medical-related death, if the medical examiner's report was unavailable, the plan shall be revisited and modified, if necessary, within one month of receipt of the report.	Doc. 4968 at 141 (Monitors find non-compliance with 2.1.3 requiring follow-up after deaths)

Medical Services	Injunction Provision 2.4.1	Non-compliant	There needs to be a robust continuous quality improvement program to monitor the quality of clinical care. As part of this program, staff monitor the absolute number and trend of various parameters on a monthly basis. Where metrics or trends in metrics show room for improvement, staff make appropriate efforts to understand the underlying reason for deviation, take reasonable steps to effectuate improvement, evaluate the effectiveness of these steps in a reasonable time, and make adjustments to its improvement efforts as needed. At a minimum, ADCRR will monitor the following parameters: • percentage of individuals (regardless of whether diagnosed with hypertension) whose systolic blood pressure exceeds 140 mmHg or diastolic blood pressure exceeds 90 mmHg; • average hemoglobin A1C (regardless of whether diagnosed with diabetes); • percentage of individuals taking ten or more prescribed medications; • percentage of women receiving timely breast screening; - percentage of women receiving timely cervical cancer screening; • percentage of pregnant women who have the results of routine prenatal laboratory tests results as recommended in current national guidelines (e.g., Guidelines for Prenatal Care, 8th Edition, American Academy of Pediatrics and American College of Obstetricians and Gynecologists, Table 6-2) documented within one month of diagnosis of pregnancy; • percentage of health care grievances which are appealed; - percentage of health care grievance appeal replies that are appropriate; • percentage of prisoners on antipsychotic medications receiving timely AIMS (abnormal involuntary movement scale) assessments; • percentage of prisoners on antipsychotic medications receiving appropriate and timely metabolic assessments; • percentage of prisoners receiving punishment for a rule violation, for whom a mental health intervention would have been more clinically appropriate than punishment; - and percentage of prisoners arriving at ADCRR for whom intake screening by an RN (or higher credentialed professional) is completed more than four hours after arrival.	Doc. 4968 at 142-43 (Monitors find that Defendants have “completely failed to meet the requirements of any of the 12 domains listed” in 2.4.1 regarding a quality improvement plan and “and has failed to do so consistently for the past two years,” which “increases the risk of harm to patients”)
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Medical Services	Injunction Provision 2.4.2	Non-compliant	In addition to the parameters prescribed in 2.4.1, ADCRR will monitor other parameters as reasonably dictated by the other self-improvement activities described in the Injunction.	Doc. 4968 at 144-46 (Monitors find noncompliance with 2.4.2 regarding monitoring other parameters and “with regarding to systemic dangers to which patients are exposed and which have caused serious harm, Defendants are unable to identify, examine, remediate in a manner that is lasting, and monitor the effectiveness of its remediation of these dangers”)
Medical Services	Injunction Provision 6.2a/7.3	Non-compliant	All patients are assigned a Primary Care Practitioner (PCP.) Patients are appropriately assigned to a physician or APP based on the patient's medical complexity.	Doc. 4968 at 147-49 (Monitors find that “Defendants’ practice regarding [6.2a/7.3 requiring that patients be assigned a primary care practitioner] has changed little since trial, causing a “significant risk of serious harm and causing serious harm”)
Medical Services	Injunction Provision 6.2c	Non-compliant	Facility Medical Directors (FMD) at high intensity facilities shall be assigned up to 100 patients as the primary care provider and shall have no other scheduled patient care assignments including supervision of APPs or as the scheduled provider for specialized units such as Inpatient Component (“IPC”) or Special Needs Unit (“SNU”). This does not limit FMDs from occasional unscheduled clinical supervision and care activities.	Doc. 4968 at 150 (Monitors find Defendants’ non-compliance with 6.2c requiring that Facility Medical Directors (FMD) at high intensity facilities be assigned up to 100 patients and have no other scheduled patient care assignment, finding that one FMD has over 600 patients)

Medical Services	Injunction Provision 6.4	Non-compliant	All medical physicians—at hiring and during employment—shall be board certified in Internal Medicine or Family Practice, or board eligible if within 7 years of their completion of an ACGME approved residency in one of these 2 specialties, with the following exceptions: medical directors, shall be board certified at hiring and during employment; physicians providing obstetric and gynecologic services shall be board certified or board eligible if within seven years of their completion of an ACGME approved residency in obstetrics and gynecology; and physicians who are currently employed and are not board eligible may remain employed for no longer than one year after issuance of this Order. They may also not possess a restricted license if the restriction is related to clinical competency or is restricted to practice in a correctional facility. (Notify Court Monitors if there is a request for an exception)	Doc. 4968 at 151 (Defendants and Monitors agree with 64% compliance with 6.4 requiring certain qualifications for medical physicians, and Monitors note that NaphCare disagrees with the necessary qualifications set forth in the Injunction)
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Medical Services	Injunction Provision 1.11	Non-compliant	Licensed Practical Nurse (“LPNs”) shall practice within their scope of practice set forth in Arizona Administrative Code § 4-19-401 (not independently assess patients or initiate a plan of care or treatment.)	Doc. 4968 at 152-54 (although Defendants self-assess at 100% compliance with 1.11 regarding practice limitations for LPNs consistent with Arizona law, Monitors find that Defendants are non-compliant finding that ADCRR allows LPNs to see patients independently and the EHR encourages this practice, while Defendants “make[s] a critical logic error in its analysis [of its compliance with this factor] despite repeated oral and written feedback”)
Medical Services	Injunction Provision 1.12	Compliant	No one for whom a health professions license is required may possess a restricted license if the restriction is related to clinical competency or is restricted to practice in a correctional facility.	
Medical Services	Injunction Provision 1.9	Non-compliant	Directors of Nursing (DON) at each complex may not spend more than 15% of their time providing scheduled or unscheduled patient care.	Doc. 4968 at 156 (although Defendants assert 71% compliance with 1.9 regarding Directors of Nursing spending no more than 15% of their time providing scheduled or unscheduled patient care, Monitors assert that Defendants remain non-compliant due to understaffing and a percentage is not an effective way of determining compliance)

Medical Services	Injunction Provision 1.4	Non-compliant	Telehealth for medical care may be used only when clinically appropriate.	Doc. 4968 at 157-58 (Monitors find Defendants noncompliant with 1.4 regarding telehealth when clinically appropriate because Defendants use telehealth “well beyond its safe limits and without the availability of other proxies”)
Medical Services	Injunction Provision 1.6	Non-compliant	There is sufficient space, equipment (e.g., otoscopes, ophthalmoscopes), and supplies (e.g., dressings) to deliver medical care services appropriate to the location.	Doc. 4968 at 159-61 (Defendants self-assessed 83% compliance with 1.6 requiring sufficient space, equipment, and supplies to deliver medical care services appropriate to the location, but Monitors assert “performance . . . cannot logically be described by percentage” and noting that Defendants notes in its own monthly report that several facilities do not have enough space to adequately see patients)
Medical Services	Injunction Provision 3.5	Compliant	The equipment used for interpretation shall allow for confidential communication in all medical health care circumstances (e.g., dual hand- or head-set device in locations where a speaker phone or computer can be seen or overheard by other patients or custody staff.)(As explained in more detail below in provision 1.7, the Injunction looks separately at whether, for this provision, ADCRR has the proper equipment to allow for confidential communication when interpretive services are needed. Whether or not that equipment is actually used to benefit is captured in provision 1.7.)	

Medical Services	Injunction Provision 1.7	Non-compliant	There is auditory and visual confidentiality during medical encounters or encounters that are not strictly medical or MH (confidentiality during MH encounters is addressed in section 16.7.) Breaches of confidentiality are limited to the measures required to ensure safety, and all staff shall maintain the confidentiality of any information they acquire as a result of the breach.	Doc. 4968 at 162-63 (Defendants self-assessed its compliance with 1.7 regarding auditory and visual confidentiality during medical encounters or encounters that are not strictly medical or MH as 73-100%, but Monitors assessed noncompliance and systemic failure)
Medical Services	Injunction Provision 1.10	Compliant	All staff hired in clinical medical supervising positions must have at least two years clinical experience.	
Medical Services	Injunction Provision 1.13	Non-compliant	Health care staff (Medical and Mental Health) responsible for direct patient care shall not be mandated to work beyond the following limits: more than 12 hours in any 24-hour period; less than 8 hours off between any two shifts; more than 60 hours in a calendar week defined as Sunday through Saturday.(1.14. The limits on overtime may be extended during emergency situations. Time spent on-call is not included in the time limits.)	Doc. 4968 at 164 (Monitors assess non-compliance with 1.13 limiting hours for healthcare staff)
Mental Health	Injunction Provision 1.1	See subprovisions below	All care and the documentation supporting that care, delivered to patients during: a MH (primarily face-to-face encounters), in response to an inquiry from a nurse or patient, during a chart review or chart-based triage decision, or upon receipt of results from a test, other external health record, shall be clinically appropriate. Settings include, but are not limited to those described in the subprovisions of these provisions below.	Doc. 4968 at 165 (Monitors assess noncompliance with 1.1 requiring clinically appropriate care for mental health encounters despite Monitors repeatedly highlighting the deficiencies)
Mental Health	Injunction Subprovision 1.1a	Non-compliant	Emergent care	Doc. 4968 at 168 (Defendants self-assess 80% compliance with 1.1a regarding emergent care, but Monitors assess 28% compliance)

Mental Health	Injunction Subprovision 1.1b	Non-compliant	Urgent care	
Mental Health	Injunction Subprovision 1.1c	Non-compliant	Non-urgent	Doc. 4968 at 170 (Monitors assess non-compliance with 1.1c regarding non-urgent care)
Mental Health	Injunction Subprovision 1.1d	Non-compliant	Care provided by psychology associates or psychologists in an outpatient setting (MH-3)	Doc. 4968 at 171 (Monitors assess noncompliance with 1.1d regarding care provided by psychology associates or psychologists in outpatient setting)
Mental Health	Injunction Subprovision 1.1e	Non-compliant	Care provided by psychiatric practitioners in an outpatient setting (MH-3)	Doc. 4968 at 172 (Defendants assess 100% compliance with 1.1e regarding care provided by psychiatric practitioners in outpatient setting, but Monitors assess only 94% compliance when using Defendants' dataset and noting that dataset is only one element in determining compliance)
Mental Health	Injunction Subprovision 1.1g	Non-compliant	Care provided by a psychology associate or psychologist in a MH Residential Unit (MH-4)	Doc. 4968 at 173-75 (Monitors assess Defendants noncompliant with 1.1g regarding care provided by psychology associate or psychologist in Mental Health Residential Unit)

Mental Health	Injunction Subprovision 1.1h	Non-compliant	Care provided by a psychiatric practitioner in a MH Residential Unit (MH-4.) This includes the requirements in 16.4.5 that the encounters are as often as clinically indicated, but no less often than every 14 days.	Doc. 4968 at 176-77 (Defendants self-assessed 93% compliance with 1.1h regarding care provided by psychiatric practitioner in Mental Health Residential Unit, Monitors found 50% compliance when using Defendants' dataset and noting that dataset is only one element in determining compliance)
Mental Health	Injunction Subprovision 1.1i	Non-compliant	Care provided by a psychology associate or psychologist in MH Inpatient Unit (MH-5)	Doc. 4968 at 178-79 (Monitors assess noncompliance with 1.1i regarding care provided by psychology associate or psychologist in mental health inpatient unit)
Mental Health	Injunction Subprovision 1.1j	Non-compliant	Care provided by a psychiatric practitioner in a MH Inpatient Unit (MH-5.) This includes the requirement in 16.5.4 that a psychiatric practitioner shall conduct a clinical encounter as often as clinically indicated, but no less than once per week.	Doc. 4968 at 180-81 (Monitors assess noncompliance with 1.1j regarding care provided by psychiatric practitioner in mental health inpatient unit, noting that in 2/3rds of reviewed cases, psychiatric practitioner "failed to provide minimally necessary care." Defendants assess 88% compliance, but using the same dataset, the Monitors assessed 36% compliance "despite ongoing feedback and coaching from the Monitors")

Mental Health	Injunction Provision 1.3	Non-compliant	All patients with mental illness who require regular follow-up shall be designated on the mental health caseload.	(Doc. 4968 at 182 (Defendants self-assess compliance with 1.3 regarding follow-up for patients with mental illness as 100%, but experts assess 88% using the same dataset and noting that dataset is only one element in determining compliance))
Mental Health	Injunction Provision 1.22	Non-compliant	Follow-up visits with MH professionals are completed within the timeframe ordered.	Doc. 4968 at 183 (Monitors assert Defendants noncompliant with 1.22 regarding timely follow-up with mental health professionals)
Mental Health	Injunction Provision 1.21a	Unable to determine compliance	All refusals of patient-initiated visits shall be made directly to a health care professional by telephone, video, or face-to-face. If a patient will not voluntarily displace health care staff go to the patient's location.	Doc. 4968 at 184 (Defendants self-assess 80% compliance with 1.21a regarding handling of refusals of patient-initiated visits, but Monitors unable to assess due to flawed dataset)
Mental Health	Injunction Provision 1.21b	Non-compliant	All refusals of a MH professional-initiated health visits are made by telephone, video, or face-to-face with an RN or practitioner for medical visits or a masters level therapist, psychologist, or psychiatric practitioner (psychiatrist, psychiatric nurse practitioner, psychiatric physician assistant) for mental health visits, within three days after the appointment. If a patient will not voluntarily displace health care staff go to the patient's location.	Doc. 4968 at 185-86 (Defendants self-assess 80% compliance with 1.21b regarding handling of refusals for mental health professional-initiated health visits, but Monitors assess 60% compliance using same dataset and point to overuse of BHTs)

Mental Health	Injunction Provision 5.1	Non-compliant	For patients on the MH caseload with identified treatment providers in the community, if the patient consents, health care staff shall send each provider relevant health care information prior to the patient's release. This includes, at a minimum, a problem list, list of active medications, current symptoms, functional impairments, a summary of relevant care provided during incarceration, any necessary care or follow-up care, one or more points of contact if a community provider requires further information, name and contact information of the primary therapist, an aftercare plan that reflects progress in treatment, and a current treatment plan. The patient's health record shall contain documentation of the above information that was provided, when, and to whom.	Doc. 4968 at 187-88 (Defendants self-assess compliance at 88% with 5.1 regarding sending community provider relevant mental health information with patient consent, but Monitors estimate 20% and note two errors in assessment of performance)
Mental Health	Injunction Provision 16.1	Non-compliant	A psychology associate or psychologist conducts a mental health assessment of each patient within one business day of that patient first entering the ADCRR system. The intake mental health assessment shall identify and document sufficient relevant information regarding the presence and severity of mental health symptoms; current impact on functioning; past hospitalization/treatment including response to treatment; medications; suicide risk; behavioral observations of staff; and a preliminary designation of level of care.	Doc. 4968 at 189-90 (Monitors find Defendants noncompliant with 16.1 regarding psychology associate or psychologist conducting intake assessments because in one-third of patients, assessments are clinically inadequate)
Mental Health	Injunction Provision 15.8	Non-compliant	For patients admitted to ADCRR on a psychotropic which is not on ADCRR's formulary, the medication shall be continued if, based on the patient's history, there is significant risk of worsening of the condition if a different medication is prescribed. If no such risk exists, the medication shall be continued long enough to allow a safe transition to a different medication or medications.	Doc. 4968 at 191 (Defendants self-assess compliance with 15.8 regarding non-formulary psychotropics as 96% and Monitors assert it may be 96%, but could be lower and Defendants will not produce formulary despite Monitors' request for it)

Mental Health	Injunction Provision 15.3	Non-compliant	Patients on the mental health caseload who believe they need mental health care shall submit HNRs. The primary therapist or, if necessary, another psychology associate shall triage HNRs within 24 hours of receipt. "Triage" in this context means determining whether the request requires immediate attention and resolution or whether the request can safely be deferred until the primary therapist can address it. Documenting the word "Triaged" is adequate evidence of triage. Primary therapists shall address the HNR within three business days of its submission. "Address" means evaluating the request, determining the clinical need, and if an action is required (e.g., face-to-face visit), planning that action to occur in a clinically appropriate timeframe. When the primary therapist is absent, another psychology associate or a psychologist completes these tasks in their stead within the same time.	Doc. 4968 at 192-95 (Defendants self-assess compliance with 15.3 regarding handling of mental health HNRs at 80%, but Monitors assess it at 50% using same data and Monitors identify issues with data)
Mental Health	Injunction Provision 15.4	Non-compliant	If a patient's PT determines a visit is clinically appropriate following submission of an HNR, the patient shall be seen by the PT or referred to another professional as directed by the PT.	Doc. 4968 at 196-97 (Defendants self-assess 80% compliance with 15.4 regarding PT visits after submission of HNR, but using same data, Monitors assess 50% compliance)
Mental Health	Injunction Provision 15.5	Non-compliant	Patients who are not yet on the mental health caseload but request mental health treatment shall submit requests to be seen through the procedures for seeking medical care.	Doc. 4968 at 198 (Defendants self-assessed compliance with 15.5 regarding seeking initial mental health treatment as 100%, but using same data, Monitors found 25% compliance)

Mental Health	Injunction Provision 15.6	Non-compliant	When custody staff, families, or any other concerned party refers a patient for mental health assessment, there is a timely response to the concern by mental health staff.	Doc. 4968 at 199-200 (Monitors find non-compliance with 15.6 regarding responses of mental health staff to reports made by parties other than patient and that Defendants' methodology is flawed)
Mental Health	Injunction Provision 16.3.1.1	Non-compliant	An MH-3 patient's assigned PT shall conduct an initial comprehensive mental health evaluation within one month of arriving at the assigned facility if not already completed when the patient first entered the prison system.	Doc. 4968 at 201-203 (Defendants self-assess compliance with 16.3.1.1 regarding initial comprehensive mental health evaluation for MH-3 as 100%, Monitors found performance level to be close to 0%)
Mental Health	Injunction Provision 16.3.1.2	Non-compliant	An MH-3 patient's assigned PT shall conduct an evaluation whenever there is a change in MH level of care designation.	Doc. 4968 at 204 (Monitors find Defendants noncompliant with 16.3.1.2 regarding PT assessment of MH-3 when there is a change in MH level)
Mental Health	Injunction Provision 16.3.1.3	Non-compliant	An MH-3 patient's assigned PT shall conduct an evaluation at least once per year.	Doc. 4968 at 205-206 (Monitors find Defendants noncompliant with 16.3.1.3 regarding MH-3 PT evaluation once per year)

Mental Health	Injunction Provision 16.3.3	Non-compliant	A treatment plan meeting shall be conducted with MH-3 patients and their assigned PT. The treatment plan meeting shall occur at least once per year. A psychologist or psychiatric practitioner shall also be present for complex cases and in all other cases shall provide input to the PT prior to the treatment plan meeting. At that meeting, the patient's treatment plan shall be reviewed and updated to determine adherence to treatment, efficacy of interventions, evaluation of the level of care needs, diagnostic impressions, progress to date in treatment, and steps taken toward moving to a less restrictive environment, if applicable. The timing of the treatment plan meetings should be based on the needs identified in the treatment plan, but no less often than once a year. The treatment plan shall include a date for next review based on the content of the plan. If no timeline is identified, a treatment plan meeting shall occur at least once per year.	Doc. 4968 at 207-208 (Monitors find Defendants noncompliant with 16.3.3 regarding treatment plan meetings with MH-3 patients focusing on low-quality of treatment plans)
Mental Health	Injunction Provision 16.3.2	Non-compliant	A psychiatric practitioner shall conduct an appropriate clinical encounter with all patients in an outpatient level of care (i.e., MH-3) on psychotropic medications as often as clinically required, no less often than every three months.	Doc. 4968 at 209 (Defendants self-assess compliance with 16.3.2 regarding outpatient-care patients on psychotropic medications encounters with psychiatric practitioners as 100%, but Monitors find methodology to be flawed and that Defendants' failure to make a risk-benefit analysis "posed a significant risk to the patient of the potential side effects of his medications without commensurate benefits)

Mental Health	Injunction Provision 16.4.1.1	Non-compliant	An MH-4 patient's assigned PT shall conduct an evaluation whenever there is a significant change in the course of treatment, e.g., new type of treatment including medication, significant decompensation.	Doc. 4968 at 212-14 (Defendants self-assess compliance with 16.4.1.1 regarding PT evaluation when significant change in course of treatment for MH-4 patient as 91%, but Monitors assess at 30% with same dataset and note percentage is only element in measuring Injunction compliance)
Mental Health	Injunction Provision 16.4.1.2	Non-compliant	An MH-4 patient's assigned PT shall conduct an evaluation at least annually, documenting the patient's need for residential level of care.	Doc. 4968 at 215-16 (Monitors find Defendants noncompliant with 16.4.1.2 regarding mental health evaluations, and noting that treatment can fall well below standard of care without compliance)
Mental Health	Injunction Provision 16.4.2	Non-compliant	Patients in residential level of care shall have face-to-face encounters with their assigned PTs as determined by the treatment plan.	Doc. 4968 at 217-18 (Monitors assess that "Defendants continue to fail to provide clinically meaningful treatment to mentally ill patients" and are non-compliant with 16.4.2 regarding face-to-face encounters with PTs for patients in residential level of care)

Mental Health	Injunction Provision 16.4.3	Non-compliant	Patients in residential level of care shall have their treatment plans reviewed and updated as clinically indicated but no less often than every three months when the full team meeting described in the next section is conducted.	Doc. 4968 at 219-20 (Monitors find two deficiencies prevent compliance with 16.4.3 regarding review of treatment plans for patients in residential level of care)
Mental Health	Injunction Provision 16.4.4	Non-compliant	A full Treatment Team meeting shall be conducted at least every 3 months by the primary therapist, psychologist, psychiatric practitioner, and any other staff as necessary. Patients shall be included in the meeting unless there is a clinical or legitimate and substantial safety and security concern documented in the custody record. The meeting discussion shall include determination of adherence to treatment, efficacy of interventions, evaluation of their level of care needs, rationale for the need for residential care, diagnostic impressions, progress to date in treatment, and steps taken toward moving to a less restrictive environment.	Doc. 4968 at 221-22 (Defendants self-assess 91% compliance with 16.4.4. regarding full treatment team meetings for mental health patients, but Monitors note 33% compliance and that compliance is not fully reflected by percentage; experts note “risk of significant harm from inadequate Treatment Plans)
Mental Health	Injunction Provision 16.5.1.1	Non-compliant	The PT assigned to a patient in MH Inpatient care (MH-5) (or, if not already on the mental health caseload, the mental health provider assigned to the inpatient unit) shall conduct at least annually a comprehensive mental health evaluation reflecting the rationale for inpatient placement including but not limited to current symptoms and functional impairment, timing and pattern of decompensation, interventions attempted, diagnostic impressions (including potential substance-related impacts), progress in treatment to date, goals for treatment in the inpatient setting, anticipated length of stay, and criteria for discharge.	Doc. 4968 at 223-24 (Monitors find Defendants noncompliant with 16.5.1.1 regarding annual comprehensive mental health evaluation for MH-5 patients)
Mental Health	Injunction Provision 16.5.1.2	Non-compliant	The PT assigned to a patient in MH Inpatient care (MH-5) (or, if not already on the mental health caseload, the mental health provider assigned to the inpatient unit) shall upon discharge from inpatient care, prepare a discharge summary.	Doc. 4968 at 225 (Monitors find Defendants noncompliant with 16.5.1.2 regarding PT assignment to MH-5 patients)

Mental Health	Injunction Provision 16.5.2	Non-compliant	Patients in MH Inpatient care (MH-5) shall have a daily face-to-face encounter with their PT unless such an encounter would be clinically contraindicated. If the patient participates in the weekly treatment progress meeting described in Section 16.5.3, it may be counted as a daily face-to-face encounter.	Doc. 4968 at 226 (Monitors find Defendants noncompliant with 16.5.2 regarding MH-5 daily face-to-face encounters with PT)
Mental Health	Injunction Provision 16.5.3	Non-compliant	Patients in MH Inpatient care (MH-5) shall have their treatment progress reviewed daily, and teams shall meet at least weekly with all providers (e.g., nursing, psychiatry, mental health, social work, custody/unit staff, behavioral health technicians) and providers from the prisoner's previously assigned unit whenever possible. Patients shall be included in the meeting unless there is a clinical or legitimate and substantial safety and security concern documented. At a minimum, the focus of treatment teams shall be to provide updates on patient progress, the type and efficacy of interventions used, treatment adherence, potential obstacles to recovery, and rationale for continued placement in the inpatient unit.	Doc. 4968 at 227 (Monitors find Defendants noncompliant with 16.5.3 regarding treatment teams for MH-5 patients)
Mental Health	Injunction Provision 16.6.1	Non-compliant	If a patient's treatment team changes due to a change in the patient's mental health level of care the "original" PT shall provide the "new" mental health team with the rationale for the change in mental health level and the anticipated treatment needs.	Doc. 4968 at 228 (Defendants self-assess 76% compliance with 16.6.1 regarding changes in treatment team, but Monitors assess 50% and that compliance is not fully reflected in percentage)
Mental Health	Injunction Provision 16.6.2	Non-compliant	If a patient's treatment team changes due to a change in the patient's mental health level of care, if the transition is to anything other than to residential or inpatient, the "new" PT meets with the patient within seven calendar days;	Doc. 4968 at 229 (Monitors find Defendants noncompliant with 16.6.2 regarding timing of new PT after treatment plan change)
Mental Health	Injunction Provision 16.6.3	Non-compliant	If a patient's treatment team changes due to a change in the patient's mental health level of care, if the transition is to residential or inpatient level of care, the PT meets with the patient as soon as possible, but no more than one business day after arrival, and the psychiatric practitioner is contacted and collaborates on the immediate care plan as soon as a patient is admitted.	Doc. 4968 at 230 (Monitors find Defendants noncompliant with 16.6.3 regarding timing of new PT and psychiatric practitioner with treatment team change)

Mental Health	Injunction Provision 16.6.4.1	Non-compliant	If a patient's PT changes without a change in mental health level of care, if the transition is to anything other than to residential or inpatient, the "new" PT meets with the patient within seven calendar days.	Doc. 4968 at 231 (Monitors find Defendants noncompliant with 16.6.4.1 regarding timing of PT when PT changes without a change in mental health level of care)
Mental Health	Injunction Provision 16.6.4.2	Non-compliant	If a patient's PT changes without a change in mental health level of care, because the patient is being moved but is remaining in residential or inpatient level of care, the "new" PT meets with the patient within one business day.	Doc. 4968 at 232 (Monitors find Defendants noncompliant with 16.6.4.2 regarding timing of new PT after transitions in mental healthcare)
Mental Health	Injunction Provision 18.1	Non-compliant	Prior to release of any patient designated as Seriously Mental Ill ("SMI"), MH-4, or MH-5 who shall be released and who is presumptively eligible for federal or state assistance by virtue of their mental illness, ADCRR: (a) develops and documents an aftercare plan that reflects the patient's current symptoms and functional impairments, progress in treatment, and treatment plan; (b) facilitates evaluation for SMI designation and placement in the community, as clinically indicated; and (c) arranges follow-up care with an appropriate community provider where possible.	Doc. 4968 at 233-35 (Defendants self-assess compliance with 18.1 regarding procedures for release of MH-4 and MH-5 patients as 94%, but Monitors assess as close to 0% using same dataset)
Mental Health	Injunction Provision 16.8.1	Non-compliant	During normal business hours a patient who presents as a suicide risk shall have a formal in-person suicide risk assessment completed by a licensed psychology associate, psychologist, or psychiatric practitioner to determine the acute suicidal risk and the level of protection that is needed (e.g., return to current housing, placement in one-on-one observation, etc.) If the concerns are raised after normal business hours or on holidays, the on-duty mental health officer shall be consulted regarding the disposition of the patient (which may or may not include constant observation.) If the patient is placed on suicide watch as a result of the concerns raised, they should be placed under constant observation until they are able to have an in-person assessment of suicide risk by a mental health professional.	Doc. 4968 at 236-37 (Defendants self-assess compliance with 16.8.1 regarding suicide risk assessments as 78%, and Monitors assess at 72% using same dataset)

Mental Health	Injunction Provision 16.8.3	Non-compliant	Upon recommendation from a psychologist or psychiatric practitioner that housing a patient on suicide watch (a.k.a. MH Watch) in the same room with other suicide watch patients (“cohorting”) would be clinically safer than housing each patient in isolation, Defendants shall cohort such patients, provided that based on the patients’ custody classification (determined based on factors other than the fact that the individual is on suicide watch) such cohorting would not be contraindicated.	Doc. 4968 at 238-39 (Defendants self-assess compliance with 16.8.3 regarding cohorting of suicide risk patients as 82%, while Monitors assess compliance using same dataset as close to 0% identifying two flaws in ADCRR assessment)
Mental Health	Injunction Provision 16.9.2	Non-compliant	Continued treatment in a crisis stabilization bed requires review and approval by a psychologist initially at seven days and every three days thereafter. Starting at ten days following placement in a Crisis Stabilization bed, the psychologist and or psychiatric prescriber shall document the justification for their continued assignment to the Crisis Stabilization bed rather than a Residential or Inpatient bed. (Additional reference 16.9.1)	Doc. 4968 at 240-43 (Monitors find Defendants noncompliant with 16.9.2 regarding continued treatment in Crisis Stabilization bed)
Mental Health	Injunction Provision 16.9.3	Non-compliant	Patients in a crisis stabilization bed shall be evaluated at least daily in person by their PT (or another psychology associate if they have not yet been assigned a PT or have transferred from another yard.) Treatment providers shall document their intervention efforts, including but not limited to: assessing mental status; behavioral observations; documenting patient ability to independently care for activities of daily living; type(s) of treatment provided; response to interventions (including medication efficacy and compliance); anticipated length of stay; and criteria for discharge.	Doc. 4968 at 241-43 (Monitors find Defendants noncompliant with 16.9.3 regarding daily evaluation by PT and treatment plans for patients in Crisis Stabilization beds)
Mental Health	Injunction Provision 16.9.4	Non-compliant	The patient shall be assessed by a psychiatric practitioner as soon after admission to a crisis stabilization bed as possible but no longer than one business day, in order to ensure there is not a medication issue or a question of medication appropriateness that contributed to suicidal ideation.	Doc. 4968 at 244 (Defendants self-assess compliance with 16.9.4 regarding assessment by psychiatric practitioner when placed in Crisis Stabilization bed at 79%, but Monitors assess compliance at 55%)

Mental Health	Injunction Provision 16.9.5	Non-compliant	For patients placed in a crisis stabilization bed for suicidal concerns, a suicide risk assessment (SRA) shall be completed upon admission that identifies risk and protective factors and items/privileges they are allowed (based on treatment needs) while in crisis care.	Doc. 4968 at 245-46 (Monitors find Defendants noncompliant with 16.9.5 regarding suicide risk assessments for patients in Crisis Stabilization beds)
Mental Health	Injunction Provision 16.9.6	Non-compliant	A clinical note shall be entered whenever the level of suicide watch is changed.	Doc. 4968 at 247-48 (Defendants self-assess compliance with 16.9.6 regarding clinical notes when level of suicide watch changed as 96%, but Monitors assess 17% compliance using same dataset and note that they have explained to ADCRR the error in the procedure)
Mental Health	Injunction Provision 16.9.7	Non-compliant	Prior to being released from a crisis stabilization bed if placed there due to suicidal concerns, a discharge suicide risk assessment shall be completed which documents: the change/reduction in suicidal risk; the patient's identified protective factors; and plans for follow-up treatment, and aftercare including a safety plan developed in collaboration between the patient and treatment providers.	Doc. 4968 at 249 (Monitors find Defendants noncompliant with 16.9.7 regarding discharge suicide risk assessment on release from Crisis Stabilization bed)
Mental Health	Injunction Provision 16.9.8	Compliant	"Safety contracts" (forms signed by patients, agreeing not to hurt themselves) shall not be used.	
Mental Health	Injunction Provision 16.9.9	Non-compliant	When possible and safe, attempt to provide stabilization at the complex at which the patient has been housed unless there is documented clinical justification for transfer based on the low likelihood of stabilization and/or clinical danger if the patient is maintained at the complex.	Doc. 4968 at 251-52 (Defendants self-assess compliance with 16.9.9 regarding stabilization at complex where patient is housed as 100%, but Monitors calculate 80% compliance with

				same dataset)
Mental Health	Injunction Provision 16.10	Compliant	Restraints used by mental health clinicians for clinical purposes shall comply with the following 8 requirements: 1) Restraints shall be used only to prevent harm to oneself or to others and to ensure the safety and security of the staff and other patients. They shall not be used for punishment. 2) Restraints shall be ordered and reviewed only by a psychiatric practitioner or psychologist. 3) Restraints shall only be applied for the minimum amount of time necessary to accomplish the stated need (e.g., patient and staff safety, requisite transports, etc..) 4) Soft restraints shall be used whenever possible. 5) Restraints shall not be used for more than four hours at a time. Every effort shall be made to minimize the length of time in restraints. 6) Renewal of restraints beyond four hours shall be approved by the Facility Medical Director/designee and must be renewed at intervals no longer than four hours. If the Medical Director/designee are not available, a licensed mental health provider may approve continued use. The	

			justification for continued use shall be documented in the patient's medical records. Renewals occurring after hours shall be done in collaboration with the Facility Medical Director/designee, a psychiatric practitioner, or a psychologist. 7) Patients shall be restrained only in settings that allow nurses sufficient access to perform wellness checks and provide necessary medical care. Nurses shall ensure that the restraints do not impair any essential health needs, such as breathing or circulation to the extremities. These checks shall be documented in the patient's medical records. 8) Patients in restraints shall be under direct observation at all times. If an observer notes any ill effects of the restraints, every effort shall be made to remedy the ill effects and a psychiatric or medical practitioner shall be notified immediately.	
Mental Health	Injunction Provision 13.2	Compliant	A MH Duty Officer shall be available at all times when facility mental health staff are not available. The MH Duty Officer shall be a licensed psychology associate, psychologist, or psychiatric practitioner.	
Mental Health	Injunction Provision 14.1	Compliant	All psychiatrists—at hiring and during employment—shall be board certified in psychiatry, or board eligible if within 7 years of their completion of an ACGME approved residency in psychiatry, with the following exceptions: 1) supervising psychiatrists shall be board certified at hiring and during employment; 2) psychiatrists who are currently employed and are not board eligible may remain employed for no longer than one year of issuance of this Order; they may also not possess a restricted license if the restriction is related to clinical competency or is restricted to practice in a correctional facility. (Notify Court Monitors if there is a request for an exception.)	
Mental Health	Injunction Provision 14.2	Compliant	All psychologists and psychiatric practitioners shall have the appropriate state licenses. All psychology associates shall be licensed or become licensed within one year of hiring or within one year of this Order, whichever is later, and may not possess a restricted license if the restriction is related to clinical competency or is restricted to practice in a correctional facility.	

Mental Health	Injunction Provision 1.10	Compliant	All staff hired in clinical MH supervising positions must have at least two years clinical experience.	
Mental Health	Injunction Provision 1.11	Compliant	Behavioral Health Technicians shall not independently assess patients or initiate a plan of care or treatment.	
Mental Health	Injunction Provision 1.12	Compliant	No one for whom a health professions license is required may possess a restricted license if the restriction is related to clinical competency or is restricted to practice in a correctional facility.	
Mental Health	Injunction Provision 13.1	Compliant	Outpatient psychologists supervise no more than eight psychology associates, and inpatient psychologists supervise no more than six psychology associates.	
Mental Health	Injunction Provision 15.1	Non-compliant	Each patient on the mental health caseload, i.e., all patients in MH Levels 3, 4, and 5, are assigned a primary therapist (PT; psychology associate or psychologist) who serves as the single point of contact and coordination for providing care to all patients designated MH-3 and above. When a patient's assigned PT is unavailable, another psychology associate or psychologist acts on their behalf.	Doc. 4968 at 261-62 (Monitors state "[w]ith the current reports generated by Defendants, it is not yet possible to calculate an accurate count of the number of patients for whom [15.1 regarding assignment of PT to patients on mental health caseload] has been met," but that current conditions make it "impossible to provide meaningful safe MH care," which "underscores the need for immediate implementation of the PCCM and staffing plan.")

Mental Health	Injunction Provision 15.2	Non-compliant	A psychologist shall review the records of each patient who is added to, or discharged from, the mental health caseload after intake. The psychologist shall approve or deny the level of care assignment and take appropriate action.	Doc. 4968 at 263-64 (Defendants self-assess 92% compliance with 15.2 regarding psychologist review of records after mental health intake, but Monitors assess approximately 30% compliance with same dataset)
Mental Health	Injunction Provision 1.4	Non-compliant	Telehealth (video encounter with remotely located clinicians; TH) for mental health care may be used only when clinically appropriate.	Doc. 4968 at 264 (Defendants' compliance with 1.4 regarding telehealth for mental healthcare as 88%, but Monitors assert that "[d]espite our strong recommendations to the contrary, Defendants continue to rely heavily on, if not has increased its reliance on, remote mental health clinicians providing chronic care in mental health via video.")
Mental Health	Injunction Provision 15.9	Non-compliant	There is sufficient space, equipment (e.g., computer, furniture), and supplies (e.g., assessment and treatment materials) to deliver mental health care services. This includes, but is not limited to, areas for mentally ill patients to be housed, engage in programming, and receive treatment (both individual and group) in an environment commensurate with that unit/facility's designated level of care. There is auditory and visual confidentiality during MH encounters.	Doc. 4968 at 266 (With regard to 15.9 regarding sufficient space, equipment, and supplies to deliver mental health services, Monitors state "Defendants cannot possibly comply with almost any of the requirements of the Injunction in the absence of sufficient space, equipment, and supplies.")

Mental Health	Injunction Provision 16.7	Non-compliant	All mental health encounters with all patients shall occur in a confidential, therapeutically appropriate setting unless there is a clinical or legitimate and substantial safety and security concern that is documented.	Doc. 4968 at 267-68 (Monitors find Defendants noncompliant with 16.7 regarding conducting MH encounters in confidentially, therapeutically appropriate setting despite Monitors' previous documentation of these issues in their Second Interim Monitors' Report)
Mental Health	Injunction Provision 1.15	Non-compliant	There is a sufficient number of custody staff to support the functioning of the health care operation, including but not limited to: transporting patients to on-site and off-site clinical encounters and appointments; administration of medications; and providing security in the venues of health care operations. Exceptions may be made for a declared emergency (e.g., prison riot, natural disaster.)	Doc. 4968 at 270-71 (Monitors find non-compliance with 1.15 regarding sufficient number of custody staff to support healthcare due to insufficient number of custody staff while noting that existing custody staff attempts to comply)
Mental Health	Injunction Provision 1.16a	Non-compliant	(Additional reference: Any Court orders related to staffing levels) All positions required by the current contract with the health care vendor including any modifications, addenda, or updates are filled. A filled position is one in which there is an incumbent receiving a salary for the full intended time commitment of the position and is not on long term leave, e.g., Family Medical Leave Act. An individual may not fill more than 1.0 FTE.	Doc. 4968 (Monitors find that "Defendants cannot possible fulfill the requirements of" 1.16a regarding staffing levels under current contract due to inadequate number of staff with proper credentials working at Defendants on a daily basis, and noting errors in staffing numbers and competitive salary compensation calculations)

Mental Health	Injunction Provision 1.16b	Compliant	Up to 15% of staff described in 1.16a may be filled with registry staff.	
Mental Health	Injunction Provision 10.1	Non-compliant	Prescribed medications intended for directly observed therapy (“DOT”) administration shall be administered as ordered or there shall be documentation of a valid reason for non-administration.	Doc. 4968 at 275-79 (Monitors find Defendants noncompliant with 10.1 regarding prescribed medications for direct observation therapy (DOT))
Mental Health	Injunction Provision 10.2a	Non-compliant	For a patient newly admitted to a facility (e.g., transfer from another facility, return from a hospital stay, admission from a jail) and already on a medication in their previous venue, the first dose of a medication shall be delivered keep-on-person (“KOP”) or administered (“DOT”) in time for their next regularly scheduled dose.	Doc. 4968 at 280 (Monitors find Defendants noncompliant 10.2a regarding medication administration for newly admitted patients)
Mental Health	Injunction Provision 10.2b	Non-compliant	The first dose of a newly ordered medication shall be delivered (“KOP”) or administered (“DOT”) within the timeframe ordered, or if no timeframe is specified, within twelve hours for antibiotics and pain medications, and within three days for all other medications.	Doc. 4968 at 281 (Monitors find Defendants noncompliant with 10.2b regarding administration of newly ordered medications)
Mental Health	Injunction Provision 10.4.1	Non-compliant	KOP medications shall be delivered to the patient before the medication runs out (based on the date of the previous fill.) A KOP medication shall be delivered either by providing the patient with the KOP supply or by staff administering the medication from stock, dose by dose, to bridge the gap until the KOP supply is delivered. Additional medication need not be delivered before the previous fill runs out if a clinically appropriate and documented determination was made by a prescriber that the medication should not be continued, and the patient is so informed.	Doc. 4968 at 282 (Defendants self-assess its compliance with 10.4.1 regarding refills of KOP medications at 96% and Monitors agree, but note a high degree of harm from any deficiency in this area)

Mental Health	Injunction Provision 10.3	Non-compliant	When a patient refuses a medication (or classes of medication), based on the specific medication or class and the number and pattern of refusals, the medication administrator shall be triggered to escalate the case to a higher authority and within a specified amount of time (which may differ by medication or class.) The decision rules described above should be incorporated into the medication administration software of the EHR such that the EHR automatically alerts the medication administrator when action is needed and what action is needed. When medication refusals require escalation, an RN or higher will obtain an INFORMED refusal.	Doc. 4968 at 283-84 (Monitors find Defendants non-compliant with 10.3 regarding procedures for medication refusals due to uninformed refusals)
Mental Health	Injunction Provision 1.20a/b	Non-compliant	When a patient notifies a correctional officer that he/she has a need for health care (medical or mental health), the officer may not inquire as to the nature of the need or symptoms. The officer's inquiry is limited to asking whether the need is immediate, if the patient can wait to sign up for the next scheduled clinic, or if the patient is thinking of harming themselves. (If the patient is thinking of harming themselves, the officer shall immediately ensure the patient's safety and contact health care staff in accordance with Section 16.8.1.) For other needs that are immediate, the officer shall contact health care staff immediately. An RN shall then immediately triage the patient, either by seeing the patient, or talking to the patient directly over the phone. Based on triage results, the RN shall discuss the patient with a medical practitioner (i.e., physician or APP) or, if the patient is already on the mental health caseload (i.e., MH-3, 4, or 5), a mental health professional in a clinically appropriate timeframe, not to exceed four hours. In this context, the mental health professional shall be a psychology associate, psychologist, or psychiatric prescriber. Based on that interaction the professional who was contacted shall: see and treat the patient the same day; or instruct the RN on treatment to provide, and, if necessary, schedule the patient for further evaluation or treatment in a clinically appropriate timeframe; or determine the health care need is not urgent and that a reasonable patient would not have considered the health care need to be urgent, defer treatment, and instruct the patient to access non-urgent/non-emergent care for treatment.	Doc. 4968 at 285 (Monitors find Defendants noncompliant with 1.20a/b regarding correctional officer information regarding healthcare needs noting that correctional officers "are still attempting to triage episodic complaints brought to them by patients," resulting in dangerous conditions)

Mental Health	Injunction Provision 2.1.1	Non-compliant	Following any death or suicide attempt, identify all significant health care and custody errors (i.e., near misses as well as preventable adverse events.) Based on prioritization of all errors identified, a root cause analysis shall be conducted if clinically appropriate, from which an effective and sustainable remedial plan shall be crafted and implemented within one month of the death. A sustainable plan is one which outlives staff memory from a single training after the review or staff turnover. Monitor the	Doc. 4968 at 286 (Monitors find that “despite extensive feedback and coaching we have provided to Defendants’ staff, both orally and in writing, little progress has been made by Defendants to comply” with 2.1.1 regarding identification of significant healthcare and custody errors following any death or suicide attempt)
			remedial plan for effectiveness and make appropriate and timely modifications to the plan based on the monitoring. [2.1.3.] For each death, the plan in this section shall be crafted and implemented within one month whether or not the medical examiner’s report is available.	
Mental Health	Injunction Provision 2.5.1	Non-compliant	Staff capture errors, system problems, and possible system problems that come to their attention through sources, including but not limited to the near-miss and preventable adverse event reporting systems, mortality reviews, litigation filed by patients, grievances, the Court-appointed Monitors, staff reports, continuous quality improvement, etc. Staff maintain an active log of all such errors and problems to assist in deciding which issues to address, when, and at what level (complex and/or statewide), and to monitor progress in resolution. Based on this prioritization, either at the complex or state level, root cause analysis shall be conducted as appropriate, from which an effective and sustainable remedial plan is implemented in a timely manner. Such plan is one which outlives staff memory from a single training after the review or staff turnover. The remedial plan shall be monitored for effectiveness. Appropriate and timely modifications shall be made to the plan based on the monitoring.	Doc. 4968 at 287-89 (Monitors find Defendants noncompliant with 2.5.1 regarding staff capture of errors and problems stating that “[i]t is extremely difficult for us to describe in clear prose Defendants’ non-compliance because of the chaotic nature of their work, documentation, and lack thereof.”)

Mental Health	Injunction Provision 4.4a/b	Compliant	Imported or scanned documents (including but not limited to diagnostic test results, consultation reports, and hospital discharge summaries) in the EHR: shall be filed in a clear and usable manner, are accurately labeled with meaningful titles/file names, are scanned right-side up, and are filed with an appropriate document date according to the following rules: Scanned documents are dated (and appear in any programmed or ad hoc list according to this date) based on the clinically relevant date of the document, not the date scanned. For example, the clinically relevant date of a lab test is the date the test was reported by the lab; discharge summary is the date of discharge; a prior health record is the date it was received at ADCRR; an imaging study is the date of study; documents are scanned in the correct orientation and labeled with the correct date. (This provision only addresses whether a relevant document is eventually scanned into the EHR in some form, regardless of the timeliness, accuracy of labeling, or readability.)	
Mental Health	Injunction Provision 4.4c	Compliant	Fewer than 1% of files are labeled/titled with names beginning with "Miscellaneous" or "Other."	
Mental Health	Injunction Provision 4.4d/e	Non-compliant	Documents (including but not limited to diagnostic tests, consultation reports, and hospital discharge summaries) which are supposed to be manually scanned into, or electronically attached to (after receipt via email) the EHR have this completed within 2 business days of receipt. All imported documents are reviewed by the medical provider (for medical documents), or primary therapist or psychiatric prescriber (for MH documents) within 4 business days of receipt.	Doc. 4968 at 292-93 (Defendants self-assess its compliance with 4.4d/e regarding documents scanned or electronically attached to EHR 97%, but Monitors find errors in the samples, and that performance would be well below 97%, but even at 97% presents a considerable risk of harm)

Mental Health	Injunction Provision 4.5	Non-compliant	Staff provide patients access to their own medical records as follows, unless a practitioner documents in the patient's EHR how disclosure of such information would jeopardize the health, safety, security, custody or rehabilitation of the patient or others or the safety of any officer, employee or other person at the correctional institution or of a person who is responsible for transporting the patient: (a) read-only access to patients wishing to read a copy of their health record; (b) orally sharing with a patient information regarding their diagnosis or any other information about their health care; (c) providing paper copies at a fee consistent with the updated policy; or (d) as an alternative to a paper copy, if the patient agrees, staff may provide the requested records, free of charge, in an electronic medium that the patient is able to access.	Doc. 4968 at 294 (Defendants self-assess compliance with 4.5 regarding providing patients access to their own medical records as 66-89%, and using same dataset Monitors assess at 60%)
Mental Health	Injunction Provision 4.3	Non-compliant	The Problem List in a patient's health record shall have the following qualities: (1) It shall be accurate, complete, and easily usable. (2) Resolved or historical conditions or diagnoses are separated from current conditions. (3) The date of onset or resolution of resolved or historical conditions or diagnoses is indicated, if known. (4) Similar or identical diagnoses of current conditions are listed only once. For example, a Problem List should not simultaneously list "heart disease," "heart failure," and "congestive heart failure, not otherwise specified."	Doc. 4968 at 295-302 (finding noncompliance with 4.3 regarding problem lists in health record and stating "In a half a year, and despite our detailed feedback to Defendants, nothing has changed – the patient Problem Lists are still horrible, continuing to pose a significant risk to patient safety, compounded by the fact that the majority of patient visits are still with practitioners who do not already know the patient well, making an accurate, usable Problem List that much more invaluable.")

Mental Health	Injunction Provision 3.1	Non-compliant	(Additional references: 3.2, 3.3, 3.4) The patient's preferred language is known, shown in all relevant screens of the EHR, and care is delivered in the language in which the patient is fluent at all times. For all individual and group health care encounters in all settings involving patients who are not fluent in English, interpretation shall be provided via: health care staff whose name appears on a list maintained by Defendants of people who, pursuant to written policies Defendants develop, is proficient in the language understood by the patient; or in-person or via video interpretation service (for sign language) or audio language interpretation service that is compliant with federal law and uses licensed interpreters, where required by state law. Exception is made when use of the above methods is not feasible due to emergency circumstances.	Doc. 4968 at 303-305 (Defendants self-assess compliance with 3.1 regarding care and records in patient's preferred language as 99.5%, but Monitors note significant errors)
Mental Health	Injunction Provision 3.6	Non-compliant	Written available notification (such as a poster) shall be hung in all housing units and medical clinics in all prisons advising prisoners, in the ten most common languages in Arizona, of the availability of interpretation services and that they may inform healthcare staff orally in any language, in sign language, or in writing in any language that they are not fluent in English, if that is not already documented in their electronic health record.	Doc. 4968 at 306 (Defendants self-assessed compliance with 3.6 regarding posting of availability of interpretation services in ten most common languages as 89%) Monitors note that 5/43 living areas and 6/55 medical areas were missing the poster.)