

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Fred Graves, Isaac Popoca, on their own
behalf and on behalf of a class of all pretrial
detainees in the Maricopa County Jails,

Plaintiffs,

v.

Joseph Arpaio, Sheriff of Maricopa County;
Andrew Kunasek, Mary Rose Wilcox,
Denny Barney, Steve Chuceri, and Clint L.
Hickman, Maricopa County Supervisors,

Defendants.

No. CV-77-00479-PHX-NVW

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
and
ORDER**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. Summary 1

II. Background 4

III. Legal Standards 13

 A. Termination of Prospective Relief Under the Prison Litigation Reform Act
 13

 B. Relevant Period for a “Current and Ongoing” Violation 14

 C. Pretrial Detainees’ Protection from Punishment Under the Fourteenth
 Amendment 15

 D. Eighth Amendment Standard for Medical and Mental Health Care 17

 E. Remedies 20

IV. Findings of Fact and Conclusions of Law 21

 A. The Parties 21

 B. The Maricopa County Jail 22

 C. Receiving Screening 25

 D. Ready Access to Needed Medical and Mental Health Care 36

 E. Prescription Medications Without Interruption 53

 F. Electronic Records Management 56

 G. Remedies 57

 H. Fourth Amended Judgment to Be Entered 58

 I. Attorney Fees 58

V. Order 58

1 Before the Court is Defendants Fulton Brock, Don Stapley, Andrew Kunasek,
2 Max Wilson and Mary Rose Wilcox's Motion to Terminate Third Amended Judgment on
3 Behalf of Correctional Health Services (Doc. 2142).¹ The Court has considered the
4 parties' briefs, memoranda, proposed findings, and evidence and argument presented on
5 February 25–27 and March 4–6, 2014.

6
7 **I. SUMMARY**

8 Pretrial detainees held in the Maricopa County Jail brought this class action in
9 1977 against the Maricopa County Sheriff and the Maricopa County Board of
10 Supervisors seeking injunctive relief for alleged violations of their civil rights.
11 Throughout the years, the injunctive relief was amended as conditions changed. Now
12 Defendants seek to terminate the remaining injunctive relief regarding medical, dental,
13 and mental health care for pretrial detainees held in the Maricopa County Jail.
14 Terminating the Court-ordered relief would end this class action and the Court's
15 monitoring of conditions in the Maricopa County Jail, but would not end Defendants'
16 constitutional obligations to pretrial detainees.

17 The Eighth Amendment requires that the Maricopa County Jail provide pretrial
18 detainees a system of ready access to adequate medical, dental, and mental health care,
19 which includes timely examination, diagnosis, and treatment by medical personnel
20 qualified to do so. It also requires that the Maricopa County Jail not be deliberately
21 indifferent to pretrial detainees' serious medical, dental, and mental health needs,
22 including conditions that are likely to cause future serious illness and needless suffering.

23 The Fourteenth Amendment requires that the Maricopa County Jail not withhold
24 or delay medical, dental, or mental health care unless doing so is reasonably related to a
25 legitimate governmental objective, such as protecting a pretrial detainee from likely

26 ¹ On February 20, 2014, Maricopa County Supervisors Denny Barney, Steve
27 Chucri, and Clint L. Hickman were added as Defendants, and Defendants Fulton Brock,
28 Don Stapley, and Max W. Wilson were terminated from this action. (Doc. 2221.)

1 harm, protecting others from likely harm, and preserving institutional security. Lack of
2 resources does not justify delay or denial of medical, dental, or mental health care.

3 The Maricopa County Jail must make reasonable efforts to prevent a pretrial
4 detainee's confinement from causing the detainee serious medical or mental health injury.
5 It also must make reasonable efforts to avoid depriving the detainee from obtaining or
6 continuing necessary medical or mental health care the detainee would have obtained or
7 continued outside of the Jail. But the Jail is not the County's public health care provider.
8 Several hundred pretrial detainees enter the Jail daily, approximately half need some
9 form of health care, and nearly 40% are released within 24 hours. Only 35% stay longer
10 than 7 days; only 25% stay longer than 14 days. With a high-volume, short-stay inmate
11 population, the Jail cannot cure serious systemic inadequacies in public medical and
12 mental health care in Maricopa County and the State of Arizona.

13 Defendants have shown significant improvements in many areas relevant to the
14 Third Amended Judgment and have set in place practices that may cure or nearly cure
15 most of the previously identified ongoing constitutional violations. However, on August
16 9, 2013, they moved for termination of the Third Amended Judgment before collecting
17 evidence that the improvements had been successfully implemented and were producing
18 the intended results. Some of the new practices were begun only a few days before.
19 Thus, Defendants have not met their burden to prove that they eliminated all current and
20 ongoing constitutional violations as of August 9, 2013.

21 For example, Defendants now have at least one medical provider and additional
22 mental health staff assigned to the Jail's intake center 24 hours a day, 7 days a week. But
23 they have not shown they have resolved systemic deficiencies in providing pretrial
24 detainees timely face-to-face assessment by medical and mental health providers for
25 serious acute or chronic complex conditions.

26 Defendants now have designated housing for male general population pretrial
27 detainees who need close monitoring and treatment during withdrawal from alcohol
28

1 and/or drugs. But they have not shown they have resolved systemic deficiencies in
2 providing adequate monitoring and treatment of female pretrial detainees during
3 withdrawal or male pretrial detainees who are placed in housing for suicide monitoring,
4 close custody, administrative segregation, disciplinary segregation, or the Special
5 Management Unit during withdrawal.

6 Defendants have not shown that they have resolved systemic deficiencies in
7 articulating and implementing criteria for placement of seriously mentally ill pretrial
8 detainees in the Mental Health Unit, its subunits, and outside mental health/psychiatric
9 facilities. Appropriate placement, transition, and transfer do not guarantee any particular
10 result for an individual pretrial detainee, but they do require a mental health provider's
11 timely clinical assessment and judgment for each seriously mentally ill pretrial detainee.

12 Curing these systemic deficiencies may require more medical and mental health
13 providers than are currently caring for pretrial detainees in the Maricopa County Jail.
14 Defendants are not required to maintain specific staffing numbers or ratios, but they must
15 ensure that pretrial detainees with serious medical or mental health conditions are seen
16 face-to-face by providers, providers personally diagnose and plan treatment for pretrial
17 detainees with serious medical or mental health conditions, and providers' orders for
18 prescriptions, lab tests, treatments, monitoring, placement, specialist referrals, and
19 follow-up appointments are completed with urgency ordered by the provider. Pretrial
20 detainees' constitutional right to adequate medical and mental health care is best
21 protected by a system that permits qualified medical and mental health providers to
22 exercise reasonable professional judgment regarding individual pretrial detainees and that
23 provides the resources needed to comply with the providers' orders.

24 Defendants have not shown that the prospective relief ordered in the Third
25 Amended Judgment is no longer necessary to correct a current and ongoing constitutional
26 violation or that it exceeds the constitutional minimum. On this record, the prospective
27 relief ordered in the Third Amended Judgment remains necessary to ensure that pretrial
28

1 detainees have ready access to adequate medical, dental, and mental health care; are not
2 subjected to conditions that are likely to cause future serious illness and needless
3 suffering; and are not deprived of timely medical, dental, or mental health care except
4 where denial or delay of care is reasonably related to a legitimate governmental objective
5 other than financial cost.

6 Having found constitutional violations, the Court must order remedies to correct
7 them. Defendants' six-year history of incomplete compliance with the medical and
8 mental health terms of the Second Amended Judgment now requires judicial crafting of
9 remedies. Defendants will recognize that much of the specific relief ordered is what they
10 say they will do but have not yet proven to be permanent and effective. If Defendants
11 comply with this Order, within one year they will demonstrate that prospective relief no
12 longer remains necessary to correct any current and ongoing violation of Plaintiffs'
13 constitutional rights, and Court-ordered relief may be terminated before the Prison
14 Litigation Reform Act permits another motion to terminate.

15 **II. BACKGROUND**

16 This class action was brought in 1977 against the Maricopa County Sheriff and the
17 Maricopa County Board of Supervisors alleging that the civil rights of pretrial detainees
18 held in the Maricopa County, Arizona, jail system had been violated. It applies only to
19 pretrial detainees, not to convicted inmates.

20 On March 27, 1981, the parties entered into a consent decree that addressed and
21 regulated aspects of the County jail operations as they applied to pretrial detainees. On
22 January 10, 1995, the 1981 consent decree was superseded by an Amended Judgment
23 entered by stipulation of the parties.

24 On October 22, 2008, upon motion by Defendants pursuant to the Prison
25 Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626 and 42 U.S.C. § 1997, and after an
26 evidentiary hearing, certain provisions of the Amended Judgment were found to remain
27 necessary to correct a current and ongoing violation of a federal right, to extend no
28

1 further than necessary to correct the violation of the federal right, to be narrowly drawn,
2 and to be the least intrusive means to correct the violation. (Doc. 1634.) Other
3 provisions were modified or vacated, and the provisions remaining in effect, as originally
4 written or as modified, were restated in the Second Amended Judgment. (Doc. 1635.)
5 The October 22, 2008 Order stated that the Court contemplated that the parties would
6 “confer immediately about prompt compliance with the Second Amended Judgment, and
7 new proceedings will be brought at Plaintiffs’ initiative to enforce the Second Amended
8 Judgment if Plaintiffs are not satisfied.” On November 21, 2008, Defendants sought
9 appellate review of the Second Amended Judgment.

10 On December 5, 2008, a hearing was held regarding Defendants’ compliance with
11 the Second Amended Judgment, the parties’ plans for achieving compliance, and disputes
12 regarding selection of independent medical and mental health consultants to assist
13 Defendants in achieving compliance. On January 9, 2009, a hearing was held regarding
14 Defendants’ progress toward compliance with the nonmedical portions of the Second
15 Amended Judgment and selection of team leaders for medical and mental health
16 compliance efforts.

17 On January 28, 2009, upon agreement of the parties, the Court appointed Dr.
18 Lambert N. King, medical expert, and Dr. Kathryn Burns, mental health expert, to serve
19 as independent evaluators of Defendants’ compliance with the medical and mental health
20 provisions of the Second Amended Judgment. The independent evaluators conducted
21 regularly scheduled visits to the County jails and reported their findings and
22 recommendations to the Court beginning in June 2009.

23 On April 7, 2010, sixteen months after the Second Amended Judgment was
24 entered, significant areas of failure to comply with the Second Amended Judgment’s
25 medical and mental health requirements remained. (Doc. 1880.) The April 7, 2010
26 Order stated in part:
27
28

1 Although progress has been made, it appears as though most of the
2 improvements made regarding medical and mental health services have
3 been those imposing little or no additional cost on Defendants.
4 Improvements appearing to be most critically needed, e.g., developing and
5 implementing electronic medical records and medication management
6 tools, increasing staffing, providing space for confidential mental health
7 treatment, appear to have been disregarded or postponed to a void expense.
8 Further, the Court has not been advised whether Defendants are in
9 compliance with the food and nutritional terms of the Second Amended
10 Judgment.

11 Previous orders and numerous court proceedings in this matter have
12 emphasized Congress's intent that constitutional violations regarding
13 conditions of confinement be corrected expeditiously and judicial oversight
14 terminated as swiftly as possible. The Court has repeatedly informed the
15 parties of the importance of implementing long-overdue, constitutionally
16 required corrections as quickly as possible, both for the benefit of the
17 Plaintiff class and to avoid expenses incurred by unnecessary delay.
18 Because correction of constitutional violations has not proceeded
19 expeditiously to date, the parties and counsel will be ordered to meet and
20 confer to develop a proposed procedure for achieving and demonstrating
21 Defendants' complete compliance with the Second Amended Judgment,
22 including a procedure for Plaintiffs to submit fee applications at appropriate
23 intervals to be paid promptly by Defendants. The Court's purpose is to set
24 a procedure by which full compliance with the Second Amended Judgment
25 is either confirmed or specific implementing remedies are ordered and
26 complied with by the end of this calendar year. To the extent fiscal choices
27 have to be made, the Court contemplates that compliance with the
28 minimum requirements of the United States Constitution in the discharge of
the Defendants' core function of operating the county jail will take priority
over other discretionary activities of the Sheriff and the County Defendants.
The parties shall jointly file a report explaining their proposed procedure by
June 11, 2010.

(*Id.*) The April 7, 2010 Order required the parties to meet and confer to develop a
proposed schedule for confirming Defendants' full compliance with the Second Amended
Judgment or ordering specific implementing remedies that would achieve full compliance
by the end of 2010. It further set a hearing for June 24, 2010, on the parties' proposed

1 procedure for achieving Defendants' complete compliance with the Second Amended
2 Judgment. These deadlines were subsequently extended several times.

3 On June 18, 2010, the parties filed a joint report with their respective positions
4 regarding Defendants' compliance with the nonmedical portions of the Second Amended
5 Judgment. On July 30, 2010, the parties filed a supplemental joint report regarding food,
6 discovery, and presentation of disputes.

7 On July 30, 2010, the parties also filed a joint report stating each party's position
8 regarding the status of Defendants' compliance with the medical and mental health
9 portions of the Second Amended Judgment. (Doc. 1895.) The parties agreed to a
10 procedure for achieving compliance with the Second Amended Judgment regarding the
11 medical and mental health issues that remained disputed. The Court-appointed
12 independent evaluators would determine whether Defendants were in full compliance
13 with the Second Amended Judgment, and if Defendants were found not to be in full
14 compliance with any provision, the evaluators would submit detailed proposed remedies
15 and timetables for remedial action to bring Defendants into full compliance. If neither
16 party objected to an evaluator's finding and remedial recommendation, the finding and
17 remedy would be adopted as an order of the Court. The Court would resolve any
18 objections after hearing evidence on the relevant issues. But this procedure never was
19 implemented.

20 On October 13, 2010, the Ninth Circuit affirmed the Second Amended Judgment.
21 On October 28, 2010, Defendants moved to terminate the nonmedical portions of the
22 Second Amended Judgment (paragraphs 2-5 and 9-16). On November 2, 2010,
23 Defendants filed a petition for rehearing en banc in the Ninth Circuit. On November 17,
24 2010, the Court denied Defendants' motion to terminate the nonmedical portions of the
25 Second Amended Judgment for lack of jurisdiction without prejudice to refile it after
26 the Court of Appeals' mandate issued and jurisdiction was revested in this Court.
27
28

1 On January 20, 2011, the parties filed a Joint Case Management Plan Regarding
2 Health Care, which identified Defendants' disagreement with two recommendations of
3 the Court-appointed independent consultants: (1) physician assistants or nurse
4 practitioners cannot substitute for licensed physicians on weekends and holidays or in
5 providing initial health assessments of patients with or at risk of serious acute or unstable
6 medical conditions, and (2) correctional staff posted to the intake center must receive
7 training regarding mental health issues. (Doc. 1939.) On April 4, 2011, the Ninth Circuit
8 mandate issued. On June 7, 2011, the parties filed a Joint Case Management Report,
9 which stated that an evidentiary hearing regarding the medical and mental health issues
10 was no longer necessary. The same day Defendants filed a motion to terminate the
11 nonmedical provisions of the Second Amended Judgment. (Doc. 1980.) An evidentiary
12 hearing on the motion was set for October 18, 2011. (Doc. 1988.)

13 On October 12, 2011, after conducting extensive discovery, the parties stipulated
14 that certain nonmedical provisions of the Second Amended Judgment should be
15 terminated and that other provisions should remain in effect. The stipulation stated that
16 Defendants would renew the motion to terminate after April 1, 2012, and that Plaintiffs
17 would not contest the renewed motion if Defendants successfully accomplished certain
18 goals for the period November 1, 2011, through March 1, 2012. On October 13, 2011,
19 the Court granted the parties' stipulation and denied Defendants' motion to terminate
20 except as stipulated.

21 On April 24, 2012, Defendants moved to terminate certain provisions of the
22 Second Amended Judgment pursuant to 18 U.S.C. § 3626(b), and Plaintiffs did not
23 oppose the motion. On May 24, 2012, Defendants' motion was granted, and those
24 provisions of the Second Amended Judgment (Doc. 1635) that remained in effect were
25 restated in the Third Amended Judgment (Doc. 2094). The Third Amended Judgment
26 provides in relevant part:

1 2. Defendants shall provide a receiving screening of each
2 pretrial detainee, prior to placement of any pretrial detainee in the general
3 population. The screening will be sufficient to identify and begin necessary
4 segregation, and treatment of those with mental or physical illness and
5 injury; to provide necessary medication without interruption; to recognize,
6 segregate, and treat those with communicable diseases; to provide
7 medically necessary special diets; and to recognize and provide necessary
8 services to the physically handicapped.

9 3. All pretrial detainees confined in the jails shall have ready
10 access to care to meet their serious medical and mental health needs. When
11 necessary, pretrial detainees confined in jail facilities which lack such
12 services shall be transferred to another jail or other location where such
13 services or health care facilities can be provided or shall otherwise be
14 provided with appropriate alternative on-site medical services.

15 4. Defendants shall ensure that the pretrial detainees'
16 prescription medications are provided without interruption where medically
17 prescribed by correctional medical staff.

18 5. Defendants will maintain records of their compliance with
19 this Third Amended Judgment and will provide quarterly summaries of
20 those records to Plaintiffs' counsel.

21 (Doc. 2094.)

22 In January 2013, in their Tenth Reports to the Court, Dr. King and Dr. Burns
23 reported significant progress toward compliance with the Third Amended Judgment and
24 provided specific recommendations to achieve substantial compliance. (Doc. 2099.)
25 These reports were based primarily on site visits and records reviews made in October
26 2012. On February 25, 2013, the Court ordered Defendants to file a status report stating
27 their views and intentions with respect to the recommendations of Dr. King and Dr.
28 Burns.

 On June 14, 2013, Defendants filed a status report describing their efforts to
address the concerns raised by Dr. King and Dr. Burns in their Tenth Reports. (Doc.
2128.) It concluded that "Drs. Burns and King's reports do not indicate any widespread
systemic problems that violate inmates' constitutional rights" and "CHS continues to

1 perfect its level of care and treatment to the inmate population.” The status report also
2 described the temporary electronic records system then in use and progress toward
3 completing the permanent electronic health records system.

4 Regarding Dr. King’s recommendations, among other things, the status report
5 stated, “24 hour provider coverage was added to Fourth Avenue Intake in 2012,” “[t]he
6 RN and Intake provider assess (based on symptomatology and medical history) which
7 inmates require a follow-up evaluation based on individualized history and assessment,”
8 and “[a]fter the health technician conducts the Pre-Intake interview, any inmate with
9 more significant medical issues—i.e., a chronic condition, on medications, injured, etc.—
10 will see the RN in the pre-Intake area for a follow-up assessment.” Statements such as
11 these did not show that improvements had been made after Dr. King’s October 2012 site
12 visit or provide evidence that any of his recommendations had been adopted and were
13 being implemented consistently.

14 Defendants expressly disagreed with Dr. King’s recommendation that policies and
15 procedures of the Maricopa County Sheriff’s Office (“MCSO”) be modified to (1) require
16 qualified medical personnel to examine each detainee after a use of force and determine
17 whether the detainee should be given medical treatment and (2) require involvement of
18 mental health professionals to attempt to obviate use of force on a detainee with probable
19 mental illness who is passively resisting control. In other areas, Defendants simply
20 described current practices, some of which did not comply with Dr. King’s
21 recommendations, without expressly disagreeing with his recommendations. For
22 example, under the heading “Tuberculin Skin Testing Within Seven Days of Booking,”
23 the status report states, “CHS performs a skin test between ten to fourteen days from
24 Intake to coincide with the inmate’s initial health assessment.”

25 Regarding Dr. Burns’ recommendations, among other things, the June 14, 2013
26 status report described procedures for placement and treatment of mental health patients
27 at the Mental Health Unit at the Lower Buckeye Jail (“MHU”) and outpatient clinics. It
28

1 stated that mental health clerk hours were increased in the intake center to provide
2 weekend coverage beginning in December 2012, mental health audits showed
3 improvements in the timeliness of providing care, and necessary psychiatric evaluations
4 occur within four days of booking. The status report also stated: “Medications are
5 provided as quickly as possible after verification. The psychotropic drug audits
6 conducted quarterly show that medications are given to patients within three to four days
7 of booking.” Further, the report described improvements made to address issues
8 associated with isolation in the 4th Avenue Special Management Unit. The June 14,
9 2013 status report included information regarding the number of suicides per year and
10 suicides per 100,000 for 2002–2012 and concluded that “CHS’s low suicide rate indicates
11 that patients at risk for self harm are well managed.”

12 On July 29, 2013, Plaintiffs responded to Defendants’ June 14, 2013 status report
13 with respect to specific recommendations made by Dr. King and Dr. Burns. (Doc. 2138.)
14 Plaintiffs acknowledged progress made since 2008, identified recommendations for
15 which Defendants’ status report did not establish compliance, and challenged the
16 accuracy of some of Defendants’ assertions about their compliance with the
17 recommendations. Plaintiffs asserted that Defendants’ status report did not establish
18 compliance with recommendations such as those regarding the electronic health records
19 system, provider staffing during intake, face-to-face provider evaluations during intake of
20 patients with serious acute or chronic medical conditions, adequate beds and facilities for
21 closely monitoring patients at risk for severe alcohol and drug withdrawal of all custody
22 levels, revision of the MCSO Use-of-Force policy, on-site availability of nursing wound
23 care, timeliness of transferring unstable patients from outpatient jails to the MHU,
24 improvement of outpatient mental health care, timely access to appropriate mental health
25 treatment for detainees enrolled in the Restoration to Competency Program, and issues
26 with isolation in the 4th Avenue Special Management Unit. For example, Plaintiffs noted
27 that Defendants responded to some of Dr. Burns’ concerns expressed in January 2013
28

1 (based on October 2012 obser vations) regarding treatm ent of seriously m entally ill
2 patients housed in the Special Managem ent Unit by de scribing im provements made in
3 2010. Notwithstanding Plaintiffs' objections to Defendants' June 14, 2013 status report
4 and insufficient time to prov e the effectiveness of r ecent im provements, Defenda nts
5 moved to t erminate the Third A mended Judgment pursuant to 18 U.S.C. § 3626(A)(1).
6 (Doc. 2142.)

7 On August 30, 2013, the parties stipulated to waive the automatic stay of the Third
8 Amended Judgment, which 18 U.S.C. § 3626(e)(2) imposes thirty days after a motion to
9 terminate is filed, to enable the parties to conduct additional disc overy and present their
10 evidence to the Court and to allow the Court sufficient time to rule. (Doc. 2149.) On
11 September 10, 2013, the Court set deadlines for briefing Defendants' motion to terminate
12 the Third Am ended Judgm ent and set or al argument with eviden tiary hearing, if
13 requested, for Decem ber 18, 2013. (Doc. 2156.) Subse quently, Defenda nts filed a
14 statement of facts to support their motion to terminate the Third Amended Judgment
15 (Doc. 2158), a controverting statem ent of fact s responding to Plai ntiffs' additional facts
16 and objecting to Plaintiffs' pr oposed findings of fact (Doc . 2183), proposed findings of
17 fact (Doc. 2184), and a m otion to set evidentiary hearing (Doc . 2181). Plaintiffs filed a
18 response t o Defenda nts' m otion to term inate (D oc. 2178), a response t o Defenda nts'
19 statement of facts (Doc. 2179), and proposed findings of fact (Doc. 2177).

20 On December 12, 2013, the Court grante d Defendants' moti on for evidentiary
21 hearing, va cated the oral argum ent pre viously set, and set an ev identiary hearing for
22 February 18, 2014. On Janu ary 7, 2014, upon Def endants' motion, the evidentiary
23 hearing was continued to February 25, 2014. On Janua ry 13, 2014, the Court ordered
24 Plaintiffs to file a statement concisely identi fying specifically what actions they believed
25 Defendants neede d to take to correct any a nd all ongoing current vi olations within the
26 scope of the Third A mended Judgment and dea dlines by which Defendants reasonably
27 could and should com plete all of the corrective actions. On January 31, 2014, Plaintiffs
28

1 filed their statement of proposed corrective actions. (Doc. 2210.) On February 19, 2014,
2 the Court issued a Final Prehearing Order, which identified material issues of fact to be
3 decided, including whether it should order any of the corrective actions proposed by
4 Plaintiffs. On February 25, 2014, Defendants filed a trial brief regarding Maricopa
5 County's Medical Copayment.

6 An evidentiary hearing was held on February 25, 26, and 27, 2014, and March 4,
7 5, and 6, 2014. On April 18, 2014, Defendants filed a supplemental brief regarding
8 remedies adopted by other courts where a systemic constitutional violation was found.
9 (Doc. 2261.) On May 8, 2014, Plaintiffs filed a memorandum regarding remedies and
10 post-trial proposed findings of fact and conclusions of law. (Docs. 2268, 2269.)

11 The Court has considered all of the briefing, statements of facts, proposed
12 findings, and evidence presented by the parties.

13 **III. LEGAL STANDARDS**

14 **A. Termination of Prospective Relief Under the Prison Litigation Reform Act**

15 Congress enacted the Prison Litigation Reform Act to prevent federal courts from
16 micromanaging prisons by mere consent decrees. *Gilmore v. California*, 220 F.3d 987,
17 996 (9th Cir. 2000). Under the PLRA, courts may not grant or approve relief that
18 requires prison administrators to do more than the constitutional minimum. *Id.* at 999.
19 The PLRA requires that prospective relief regarding prison conditions "extend no further
20 than necessary to correct the violation of the Federal right of a particular plaintiff or
21 plaintiffs." 18 U.S.C. § 3626(a)(1). Relief must be narrowly drawn, extend no further
22 than necessary to correct the violation, and be the least intrusive means necessary to
23 correct the violation. *Id.* Further, courts must "give substantial weight to any adverse
24 impact on public safety or the operation of a criminal justice system caused by the relief."
25 *Id.*

1 The PLRA also provides that any order for prospective relief regarding prison
2 conditions is terminable upon the motion of any party one year after the district court has
3 entered an order denying termination of prospective relief under the PLRA. 18 U.S.C.
4 § 3626(b)(1). The party seeking to terminate the prospective relief bears the burden of
5 proof. *Gilmore*, 220 F.3d at 1007; *Graves v. Arpaio*, 623 F.3d 1043, 1048 (9th Cir. 2010)
6 (per curiam).

7 Although § 3626 refers to “immediate termination” and a “prompt ruling,” the
8 district court must inquire into current prison conditions before ruling on a motion to
9 terminate. *Gilmore*, 220 F.3d at 1007-08. Even if the existing relief qualifies for
10 termination under § 3626(b)(2), if there is a current and ongoing violation, the district
11 court must modify the relief to meet the PLRA standards. *Id.* at 1008. Therefore,
12 “[p]rospective relief shall not terminate if the court makes written findings based upon
13 the record that prospective relief remains necessary to correct a current and ongoing
14 violation of the Federal right, extends no further than necessary to correct the violation of
15 the Federal right, and that the prospective relief is narrowly drawn and the least intrusive
16 means to correct the violation.” 18 U.S.C. § 3626(b)(3). If prospective relief remains
17 necessary to correct a current and ongoing violation, the district court’s authority to
18 modify the existing prospective relief includes authority to expand or diminish the
19 existing relief. *See Pierce v. Orange County*, 526 F.3d 1190, 1204 n. 13 (9th Cir. 2008).
20 Determining whether such relief meets § 3626(b)(3)’s need-narrowness-intrusiveness
21 criteria “will obviously rest upon case-specific factors—namely, the extent of the current
22 and ongoing constitutional violations.” *Id.* at 1206.

23 **B. Relevant Period for a “Current and Ongoing” Violation**

24 To make the findings required to terminate prospective relief, the Court must take
25 evidence on current jail conditions, at least with respect to those conditions Plaintiffs do
26 not concede comply with constitutional requirements. *See Gilmore*, 220 F.3d at 1010.

1 Evidence of “current and ongoing” violations must reflect conditions “as of the time
2 termination is sought.” *Id.*; accord *Pierce*, 526 F.3d at 1205.

3 On September 10, 2013, the Court ordered that for evidence to be relevant to
4 Defendants’ motion to terminate the Third Amended Judgment, it must tend to show
5 whether any current and ongoing violation existed on August 9, 2013, the date
6 Defendants filed their motion. (Doc. 2156.) Relevant evidence could be obtained before
7 or after August 9, 2013, but it must show conditions as they existed on August 9, 2013.

8 **C. Pretrial Detainees’ Protection from Punishment Under the Fourteenth** 9 **Amendment**

10 The Fourteenth Amendment Due Process Clause protects a pretrial detainee from
11 punishment prior to an adjudication of guilt in accordance with due process of law. *Bell*
12 *v. Wolfish*, 441 U. S. 520, 534-35 (1979). “This standard differs significantly from the
13 standard relevant to convicted prisoners, who may be subject to punishment so long as it
14 does not violate the Eighth Amendment’s bar against cruel and unusual punishment.”
15 *Pierce*, 526 F.3d at 1205. The “more protective” Fourteenth Amendment standard
16 applies to conditions of confinement for pretrial detainees and requires the government to
17 do more than provide minimal necessities. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir.
18 2004).

19 To evaluate the constitutionality of pretrial detention conditions that are not
20 alleged to violate any express constitutional guarantee, a district court must determine
21 whether those conditions amount to punishment of the detainee. *Bell*, 441 U.S. at 535;
22 *Pierce*, 526 F.3d at 1205; *Demery v. Arpaio*, 378 F.3d 1020, 1029 (9th Cir. 2004). To
23 constitute punishment, the governmental action must cause harm or disability that either
24 significantly exceeds or is independent of the inherent discomforts of confinement, but it
25 does not need to cause a harm independently cognizable as a separate constitutional
26 violation, e.g., deprivation of First Amendment rights. *Demery*, 378 F. 3d at 1030. To
27 determine whether an action’s purpose is punitive, in the absence of evidence of express
28

1 intent, a court may infer that the purpose of a particular restriction or condition is
2 punishment if the restriction or condition is not reasonably related to a legitimate
3 governmental objective or is excessive in relation to the legitimate governmental
4 objective. *Pierce*, 526 F.3d at 1205 (citing *Bell*, 441 U.S. at 539).

5 Legitimate governmental objectives that may justify adverse detention conditions
6 include maintaining security and order and operating the detention facility in a
7 manageable fashion. *Id.* “[M]aintaining institutional security and preserving internal
8 order and discipline are essential goals that may require limitation or retraction of the
9 retained constitutional rights of both convicted prisoners and pretrial detainees.” *Bell*,
10 441 U. S. at 546. But retribution and deterrence are not legitimate governmental
11 objectives. *Demery*, 378 F.3d at 1030-31.

12 To determine whether detention restrictions or conditions are reasonably related to
13 maintaining security and order and operating the institution in a manageable fashion,
14 courts ordinarily should defer to the expert judgment of correction officials in the absence
15 of substantial evidence that indicates officials have exaggerated their response to these
16 considerations. *Bell*, 441 U.S. at 540 n.23. A reasonable relationship between the
17 governmental objective and the challenged condition does not require an “exact fit,” a
18 showing that it is the “least restrictive alternative,” or proof that the policy does in fact
19 advance the legitimate governmental objective. *Valdez v. Rosenbaum*, 302 F.3d 1039,
20 1045 (9th Cir. 2002). But it does require evidence that the correction officials’ judgment
21 is rational, *i.e.*, they might reasonably think that the policy advances a legitimate
22 governmental objective. *Id.*

23 Therefore, to find that a condition of confinement for pretrial detainees constitutes
24 a current and ongoing violation of the constitutional minimum under the Fourteenth
25 Amendment, the Court must determine that the condition:

26 (1) imposes some harm to the pretrial detainees that significantly exceeds or is
27 independent of the inherent discomforts of confinement and
28

- 1 (2) (a) is not reasonably related to a legitimate governmental objective or
 2 (b) is excessive in relation to the legitimate governmental objective.
 3

4 **D. Eighth Amendment Standard for Medical and Mental Health Care**

5 Although the “more protective” Fourteenth Amendment standard applies here, any
 6 violation of the Eighth Amendment necessarily also violates the Fourteenth Amendment.
 7 The Eighth Amendment requires that prison officials ensure that inmates receive
 8 adequate food, clothing, shelter, sanitation, and medical care and take reasonable
 9 measures to guarantee the safety of the inmates. *Farmer v. Brennan*, 511 U.S. 825, 832
 10 (1994). Courts must consider the effect of each condition of confinement in its context,
 11 “especially when the ill-effects of particular conditions are exacerbated by other related
 12 conditions.” *Wright v. Rushe n*, 642 F.2d 1129, 1133 (9th Cir. 1981). “A prison that
 13 deprives prisoners of basic sustenance, including adequate medical care, is incompatible
 14 with the concept of human dignity and has no place in civilized society.” *Brown v. Plata*,
 15 ___ U.S. ___, 131 S. Ct. 1910, 1928 (2011).

16 Specifically, prison officials must “provide a system of ready access to adequate
 17 medical care,” including mental health care, that provides access to medical staff who are
 18 competent to examine inmates, diagnose illnesses, and treat medical problems or refer
 19 inmates to those who can. *Hoptowitz v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982),
 20 *abrogated in part on other grounds by Sandin v. Conner*, 515 U.S. 472, 481-84 (1995).
 21 Further, the system must be able to respond to emergencies promptly and adequately. *Id.*

22 Moreover, the Eighth Amendment prohibits deliberate indifference not only to an
 23 inmate’s current health problems, but also to conditions of confinement that are very
 24 likely to cause future serious illness and needless suffering. *Helling v. McKinney*, 509
 25 U.S. 25, 33 (1993). “A medical need is serious if failure to treat a prisoner’s condition
 26 could result in further significant injury or the unnecessary and wanton infliction of
 27 pain.” *Peralta v. T.C. Dillard*, 744 F.3d 1076, 1086 (9th Cir. 2014) (en banc) (internal
 28 quotation marks omitted).

1 Deliberate indifference to serious medical needs may be manifested not only by
2 medical providers failing to respond to a prisoner's needs, but also by detention officers
3 intentionally denying or delaying access to medical care or intentionally interfering with
4 prescribed treatment. *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). A policy of
5 medical understaffing may show deliberate indifference. *Cabrales v. County of Los*
6 *Angeles*, 864 F.2d 1454, 1461 (9th Cir. 1988), *vacated and remanded*, 490 U.S. 1087 (1989),
7 *reinstated*, 886 F.2d 235 (9th Cir. 1989). And “[l]ack of resources is not a defense to a
8 claim for prospective relief because prison officials may be compelled to expand the pool
9 of existing resources in order to remedy Eighth Amendment violations.” *Peralta*, 744
10 F.3d at 1083; *see also Spain v. Proconier*, 600 F.2d 189, 199-200 (9th Cir. 1979) (cost or
11 inconvenience of providing adequate conditions is not a defense to the imposition of
12 punishment in an action for injunctive relief).

13 Holding inmates with serious mental illness in prolonged isolated confinement
14 may cause serious illness and needless suffering in violation of the Eighth Amendment.
15 *See, e.g., Coleman v. Brown*, 938 F. Supp. 2d 955, 979 (E.D. Cal. 2013) (mentally ill
16 inmates in administrative segregation faced substantial risk of serious harm, including
17 exacerbation of mental illness and potential increase in suicide risk). To determine
18 whether segregated confinement meets constitutional standards, courts must consider
19 both the length of the segregated confinement of inmates with serious mental illness and
20 the specific conditions of the confinement. *Hutto v. Finney*, 437 U.S. 678, 686 (1978).
21 Conditions to be considered may include: (1) the length of time prisoners with mental
22 illness spent in solitary confinement (approximately 22 hours or more a day); (2) the
23 extent to which solitary confinement interfered with prisoners' ability to obtain adequate
24 mental health treatment; (3) the conditions accompanying the solitary confinement
25 experienced by prisoners with serious mental illness; and (4) the extent to which systemic
26 deficiencies at the facility, *e.g.*, deficiencies in mental health programming, screening,
27 and accountability, contributed to an overreliance on solitary confinement as a means of
28

1 controlling prisoners with serious mental illness. *Coleman v. Brown*, CV-90-00520-
2 LKK-DAD, Doc. 4919 (E.D. Cal. Nov. 12, 2013) (publication of the United States
3 Department of Justice, Civil Rights Division).

4 District courts have found that conditions of extreme social isolation likely would
5 cause some degree of psychological trauma for most inmates and likely would cause
6 serious mental illness or a massive exacerbation of existing mental illness for inmates
7 with active mental illness or a history of mental illness. Thus, the confinement in a
8 maximum security housing unit constituted a *per se* violation of the Eighth Amendment
9 only for inmates with active mental illnesses or a history of mental illness. *Madrid v.*
10 *Gomez*, 889 F.Supp. 1146, 1155, 1235-36, 1265-66 (N.D. Cal. 1995); *Ind. Prot. &*
11 *Advocacy Servs. Comm'n v. Comm'r, Ind. Dep't of Corr.*, 2012 WL 6738517 at *23 (S.D.
12 Ind. Dec. 31, 2012) (expressly following *Madrid v. Gomez*). Similarly, a district court
13 found that extremely isolating conditions in a Wisconsin supermaximum prison caused
14 psychological harm to seriously mentally ill prisoners, relatively healthy prisoners who
15 had histories of serious mental illness, and prisoners who had never suffered a breakdown
16 in the past but were prone to breakdown when stress and trauma became severe.
17 *Jones'El v. Berge*, 164 F. Supp. 2d 1096, 1101-02 (W.D. Wis. 2001).

18 Recently, nearly 20 years after first granting injunctive relief to the class of
19 seriously mentally ill prisoners confined in the California state prison system, a district
20 court recognized defendants' significant progress overall, but found defendants' motion
21 to terminate "clearly premature" because defendants had not sufficiently remedied Eighth
22 Amendment violations in use of force, disciplinary measures, and segregated housing for
23 seriously mentally ill prisoners. *Coleman v. Brown*, ___ F.Supp.2d ___, 2014 WL 1400964,
24 at *1 (E.D. Cal. Apr. 11, 2014). The court found that "placement of seriously mentally ill
25 inmates in California's segregated housing units can and does cause serious
26 psychological harm, including decompensation, exacerbation of mental illness,
27 inducement of psychosis, and increased risk of suicide," and "the Eighth Amendment
28

1 prohibits placements of seriously mentally ill inmates in conditions that pose a substantial
2 risk of exacerbation of mental illness, decompensation, or suicide.” *Id.* at *20, 25. It
3 concluded that where clinical judgment demonstrates that a proposed placement poses an
4 unacceptable level of risk, that judgment cannot be overridden by custodial requirements,
5 and an alternative placement must be made. The court ordered defendants to develop a
6 protocol for placement decisions and a plan for alternative housing that would preclude
7 placement of any seriously mentally ill inmate in existing administrative segregation
8 units when clinical information demonstrates substantial risk of exacerbation of mental
9 illness, decompensation, or suicide from such placement. *Id.* at *26.

10 Even under the Eighth Amendment, constitutional standards for prison conditions
11 are not fixed:

12
13 Underlying the eighth amendment is a fundamental premise that
14 prisoners are not to be treated as less than human beings. The amendment
15 is phrased in general terms rather than specific ones so that while the
16 underlying principle remains constant in its essentials, the precise standards
17 by which we measure compliance with it do not. It follows that when
18 confronting the question whether penal confinement in all its dimensions is
19 consistent with the constitutional rule, the court’s judgment must be
20 informed by current and enlightened scientific opinion as to the conditions
21 necessary to insure good physical and mental health for prisoners.

22 *Spain v. Procunier*, 600 F.2d 189, 200 (9th Cir. 1979) (citations omitted); *see Trop v.*
23 *Dulles*, 356 U.S. 86, 100 (1958) (“The [Eighth] Amendment must draw its meaning from
24 the evolving standards of decency that mark the progress of a maturing society.”).

25 **E. Remedies**

26 “[C]onstitutional violations in conditions of confinement are rarely susceptible of
27 simple or straightforward solutions.” *Brown v. Plata*, ___ U.S. ___, 131 S. Ct. 1910, 1936
28 (2011). “Courts may not allow constitutional violations to continue simply because a
remedy would involve intrusion into the realm of prison administration.” *Id.* at 1928-29.
Further, “[a] history of noncompliance with prior orders can justify greater court
involvement than is ordinarily permitted.” *Sharp v. Weston*, 233 F.3d 1166, 1173 (9th

1 Cir. 2000) (affirming order that identified areas of noncompliance with prior injunction
2 and gave more specific directions regarding how to comply with the original order).
3 Although a district court must give prison officials opportunity to propose remedies, it
4 has broad discretion regarding when and how that proposal should be submitted for
5 consideration by the court. *Graves v. Arpaio*, 623 F.3d 1043, 1047 (9th Cir. 2010).

6 “Once a constitutional violation has been found, a district court has broad powers
7 to fashion a remedy. A court may order relief that the Constitution would not of its own
8 force initially require if such relief is necessary to remedy a constitutional violation.”
9 *Sharp*, 233 F.3d at 1173 (internal quotation marks and citations omitted; after failure to
10 comply with prior injunction, district court did not abuse discretion by issuing more
11 specific directions that were not, in and of themselves, constitutionally required). The
12 PLRA authorizes prospective relief that is necessary to correct an ongoing constitutional
13 violation, but does not require that the relief “exactly map” onto constitutional
14 requirements. *Graves*, 623 F.3d at 1050. Although 18 U.S.C. § 3626(b)(3) requires that
15 prospective relief be narrowly drawn and the least intrusive means to correct the
16 violation, a remedy does not fail narrow tailoring simply because it will have positive
17 collateral effects. *Plata*, 131 S. Ct. at 1940.

18 Federal courts may give considerable weight to expert opinion regarding how to
19 remedy relevant constitutional violations. *Id.* at 1944. Although “courts must not
20 confuse professional standards with constitutional requirements,” “expert opinion may be
21 relevant when determining what is obtainable and what is acceptable in corrections
22 philosophy,” and “courts are not required to disregard expert opinion solely because it
23 adopts or accords with professional standards.” *Id.* at 1944-45.

24 **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

25 **A. The Parties**

26 1. Plaintiffs are the class of all pretrial detainees who are housed in the
27 Maricopa County Jail, which includes multiple facilities.
28

1 2. Defendants Denny Barney, Steve C huceri, Clint L. Hickman, Andrew
2 Kunasek, and Marie Lopez Rogers² are the current members of the Maricopa County
3 Board of Supervisors.

4 3. Defendant Joseph Arpaio is the Maricopa County Sheriff, whose duties
5 under A. R.S. § 11-441 include taking charge of and keeping the county jail and the
6 prisoners in the county jail.

7 4. Correctional Health Services (“CHS”) is an agency of Maricopa County
8 government and is responsible for providing health care services to those incarcerated in
9 the Maricopa County jail system. A.R.S. § 11-291(A).

10 5. Each facility within the Maricopa County Jail was accredited by the
11 National Commission on Correctional Health Care (“NCCHC”) on March 12, 2012.
12 NCCHC standards serve as a framework to ensure that systems, policies, and procedures
13 are in keeping with nationally recognized best practices. NCCHC standards include a
14 continuous quality improvement program, which uses a structured process to find areas in
15 the health care delivery system that need improvement and to develop and implement
16 strategies for improvement. A quality improvement study is one of many means through
17 which the Maricopa County Jail can collect data to demonstrate its compliance with
18 constitutional standards.

19 6. Compliance with NCCHC standards is not equivalent to complying with
20 constitutional standards. Nationally recognized best practices may exceed constitutional
21 standards in some areas and fall short in others.

22 **B. The Maricopa County Jail**

23 7. The average daily population of the Maricopa County Jail is approximately
24 8,200, which includes both pretrial detainees and sentenced inmates. Pretrial detainees
25 comprise the majority of the population.

26 _____
27 ² In May 2014, Mary Rose Wilcox resigned from the Maricopa County Board of
28 Supervisors, and in June 2014 the Board selected Marie Lopez Rogers to fill the vacancy.

1 8. This action applies only to pretrial detainees housed in the Maricopa
2 County Jail. Although some inmates housed in the Maricopa County Jail are not pretrial
3 detainees, most of the Jail's conditions, policies, procedures, and practices do not
4 distinguish between pretrial detainees and sentenced inmates. Therefore, the term
5 "inmates" used here includes both pretrial detainees and sentenced inmates, but a
6 determination of constitutional violation applies only to pretrial detainees.

7 9. Approximately 250 to 300 arrestees are processed through the 4th Avenue
8 intake center each day. Many have been arrested and brought to the Maricopa County
9 Jail previously.

10 10. The length of time that a pretrial detainee stays at the Maricopa County Jail
11 ranges from less than 24 hours to more than a year. The length of stay for most pretrial
12 detainees is relatively short. Approximately 40% of inmates are released within 24 hours
13 of booking, 50% within 2 days of booking, 65% within 7 days of booking, and 75%
14 within 14 days of booking.

15 11. Housing placements are based on gender, security level classification, and
16 medical and mental health needs. Female pretrial detainees are housed either at the
17 Estrella jail or in the Mental Health Unit at the Lower Buckeye jail.

18 12. Maricopa County Sheriff's Office ("MCSO") personnel assign each pretrial
19 detainee a security level classification based on certain factors, such as current offender
20 status, arrest and conviction history, and institutional behavior. A pretrial detainee may
21 be classified as requiring segregation for his own protection, for the protection of others,
22 and/or as a disciplinary sanction. Classification determines the extent to which the
23 pretrial detainee will be permitted contact with others and the number of hours per day
24 the pretrial detainee will be permitted outside of his cell for recreation, showers, and
25 other activities. Inmates classified as close custody are further classified into four levels
26 based on whether they are permitted out of their cells for one, two, three, or four hours a
27 day. MCSO staff assigns each pretrial detainee a security level classification at booking,
28

1 but it may modify the classification at any time. MCS Policy does not require
2 consultation with CHS staff regarding classification.

3 13. The Maricopa County Jail has medical facilities at the 4th Avenue, Lower
4 Buckeye, Towers, Estrella, and Durango jail facilities. Each facility has private
5 medical/mental health treatment rooms. Each facility has identified space for group
6 therapy sessions and programs.

7 14. The Jail's central intake center is located within the 4th Avenue jail and
8 includes holding cells for general population inmates; isolation cells for those who need
9 to be isolated for their own protection, the protection of others, or medical reasons; and
10 safe cells for those deemed to be suicidal or homicidal. It has its own medical and mental
11 health care personnel and areas for these personnel to assess pretrial detainees
12 confidentially.

13 15. The 4th Avenue jail has a central medical clinic located in the basement and
14 smaller clinics on the second, third, and fourth floors. The smaller clinics each have three
15 examination rooms and two offices. The central clinic includes a medication room, three
16 examination rooms, four offices, an x-ray area, a laboratory, a medical records room, and
17 a dental office. The central clinic provides medications administration, sick call, chronic
18 care clinics, outpatient psychiatric care, dental care, and radiology services.

19 16. The Lower Buckeye jail has medical, mental health, and dental facilities,
20 which include a 60-bed infirmary, a 260-bed Mental Health Unit ("MHU"), an outpatient
21 clinic, and the health services administration office. The outpatient clinic has seven
22 offices, a two-chair dental office, a medical records room, two medication rooms, a
23 specimen processing area, and four examination rooms.

24 17. The Towers, Estrella, and Durango jails also have outpatient clinics. The
25 Towers jail has an office, a medication room, a specimen processing area, two medical
26 examination rooms, and a mental health interview room. The Estrella jail has an office, a
27 dental office, a medical records room, a medication room, a specimen processing area,
28

1 and four examination rooms. The Durango jail has two offices, a medical records area, a
2 medication room, a specimen processing area, and three examination rooms.

3 18. Only physicians, physician assistants, and nurse practitioners are
4 considered medical providers.

5 19. Only psychiatrists, psychiatric nurse practitioners, or physician assistants
6 are considered mental health providers.

7
8 **C. Receiving Screening**

9 20. Paragraph 2 of the Third Amended Judgment provides:

10 Defendants shall provide a receiving screening of each pretrial detainee,
11 prior to placement of any pretrial detainee in the general population. The
12 screening will be sufficient to identify and begin necessary segregation, and
13 treatment of those with mental or physical illness and injury; to provide
14 necessary medication without interruption; to recognize, segregate, and
15 treat those with communicable diseases; to provide medically necessary
16 special diets; and to recognize and provide necessary services to the
17 physically handicapped.

18 21. Pretrial detainees coming to the Maricopa County Jail are processed at the
19 4th Avenue jail intake center, beginning with an initial screening by a correctional health
20 technician who takes vital signs, measures weight, and identifies emergent situations
21 requiring immediate assessment by a nurse or medical provider.

22 22. After the initial screening by a correctional health technician, a registered
23 nurse performs the receiving screening. The registered nurse takes a second set of vital
24 signs if the first set is abnormal or the pretrial detainee has reported or shown a new
25 complaint during the time between the initial screening by a correctional health
26 technician and the receiving screening.

27 23. Beginning on August 5, 2013, four days before the filing of this Motion to
28 Terminate, an expanded electronic integrated health screen for the receiving screening
was implemented. The new health screen seeks responses to more than 100 questions,
including medication and pharmacy queries, and gathers a complete set of vital signs. It

1 permits the registered nurse to document impressions of the arresting officer as well as
2 the registered nurse's observations. It is designed to identify serious conditions including
3 medical, dental, mental health, suicidal risk, substance withdrawal, communicable
4 diseases, disability-related needs, and special diet needs. Plaintiffs agree that the new
5 health screen is very well designed.

6 24. Registered nurses are expected to consult with all pretrial detainees who
7 indicate they are currently taking prescribed medication, respond positively to medical or
8 mental health questions, or have abnormal vital signs. Almost half of inmates booked
9 each day are identified as needing further evaluation by a registered nurse.

10 25. At least one medical provider, *i.e.*, a physician, physician assistant, or nurse
11 practitioner, is assigned to the intake center 24 hours a day, 7 days a week.

12 26. The medical provider assigned to the intake center may also provide
13 services in the 4th Avenue central clinic, which is located close to the intake center.

14 27. Sometimes the medical provider assigned to the intake center also provides
15 coverage for other facilities and is not physically present at the intake center.

16 Medical Care: Timely Identification, Assessment, and Placement

17 28. If a pretrial detainee is identified during the intake process as suffering
18 from a serious health condition, such as diabetes, hypertension, hyperlipidemia,
19 pregnancy, or any other condition requiring special follow-up care, intake procedures
20 require the condition to be documented in the detainee's electronic record with a chronic
21 care condition code and the detainee to be scheduled electronically for a medical
22 appointment.

23 29. During the receiving screening, if a pretrial detainee reports a chronic
24 condition, the registered nurse may call a medical provider, *i.e.*, a physician, physician
25 assistant, or nurse practitioner, with information regarding current vital signs, reported
26 prescription medications, and reported medical history so that the medical provider can
27 order medications, lab work, and follow-up appointments.
28

1 30. At the time of the receiving screening, a medical provider may decide to
2 not wait to verify medications with pharmacies before ordering them. Some medications
3 that are kept in stock in the intake center, such as blood pressure medication, may be
4 administered by a registered nurse during the intake process. If a medical provider
5 prescribes a medication that is not kept in stock in the intake center, the pretrial detainee
6 may be sent to the clinic to begin the medication as soon as the receiving screening is
7 completed.

8 31. When the receiving screening identifies a pretrial detainee as having a
9 serious acute or chronic medical condition, in most cases the pretrial detainee should be
10 seen by a medical provider on an emergency or urgent basis, no later than within 24
11 hours.

12 32. Even when the receiving screening has indicated that pretrial detainees
13 should be seen by a medical provider, many pretrial detainees have not received timely
14 face-to-face examinations by a medical provider.

15 33. After provider coverage at intake was increased to 24 hours a day, 7 days a
16 week in 2012, records do not show a substantial increase in the volume of face-to-face
17 examinations by a medical provider or their timeliness. After the increase in provider
18 coverage, there continued to be instances in which pretrial detainees with complicated
19 and serious medical needs were not assessed and treated by a medical provider within 24
20 hours after the receiving screening.

21 34. If a medical provider determines that a pretrial detainee should not enter jail
22 because of his or her medical condition, such as for a head injury or wound likely to
23 require surgery, the medical provider may refuse to permit a pretrial detainee to be
24 processed further. Then the pretrial detainee would remain the responsibility of the
25 arresting officer.

1 35. Some pretrial detainees requiring medical stabilization are sent directly
2 from the intake center to a hospital emergency department for medical clearance or
3 hospital admission.

4 36. Some pretrial detainees who are determined to be stable for jail but
5 requiring a higher level of care than available in the general population are sent directly
6 from the intake center to the infirmary.

7 37. Many pretrial detainees present at the intake center with symptoms of
8 alcohol or drug abuse.

9 38. Acute alcohol withdrawal, acute opiate withdrawal, and acute
10 benzodiazepine withdrawal are potentially dangerous, particularly if the pretrial detainee
11 has a history of withdrawal seizures.

12 39. After the receiving screening, if a pretrial detainee is determined to abuse
13 alcohol or drugs, have a history of withdrawal seizures, and be sufficiently medically
14 stable to come into jail, the medical provider assigned to the intake center usually sends
15 the pretrial detainee to the intake clinic to begin medications for withdrawal.

16 40. Defendants have not shown that as of August 9, 2013, pretrial detainees
17 who presented with serious medical health needs at intake consistently were timely seen
18 face-to-face by a medical provider.

19 41. Defendants have not shown that as of August 9, 2013, necessary treatment,
20 including laboratory studies, consistently was initiated for pretrial detainees who
21 presented with serious medical needs at intake.

22 42. Defendants have not shown that as of August 9, 2013, the receiving
23 screening consistently identified pretrial detainees who are at risk of suffering serious
24 harm due to withdrawal from alcohol or drugs, and it resulted in timely medication,
25 treatment, and appropriate monitoring for them.

26
27
28

1 43. Defendants have not shown that as of August 9, 2013, pretrial detainees
2 consistently were provided necessary medication without interruption during or following
3 intake.

4 44. Defendants have not shown that as of August 9, 2013, pretrial detainees
5 who presented with serious medical health needs at intake consistently were timely
6 placed in units within the Maricopa County Jail or facilities outside the Jail that provided
7 access to adequate treatment.

8 Mental Health Care: Timely Identification, Assessment, and Placement

9 45. The new health screen improved upon the previous screening by (a)
10 expanding the substance abuse and mental health queries, including specific inquiry
11 regarding psychotropic medication, previous hospitalization, and suicidal ideation; and
12 (b) establishing a mental health “queue” system.

13 46. Depending on a pretrial detainee’s responses to the new health screen, the
14 pretrial detainee may automatically be listed in one or more mental health “queues,” such
15 as for those possibly suicidal, designated Seriously Mentally Ill by the county public
16 mental health provider,³ currently on psychotropic medication, or refusing to answer
17 questions.

18 47. The queues indicate the priority by which pretrial detainees should be seen
19 for further mental health assessment, including deciding whether a pretrial detainee
20 should be placed in a safe cell.

21 48. CHS policy requires that if a pretrial detainee has a positive mental health
22 screening or does not respond to all of the mental health screening questions, the detainee
23 is referred for further evaluation by intake mental health staff, *i.e.*, a mental health
24 assistant or mental health professional, not a mental health provider.

25
26 ³ The term “seriously mentally ill” used elsewhere in this Order includes both
27 those designated as “Seriously Mentally Ill” by the county public mental health provider
28 and those identified by CHS as having serious mental illness.

1 49. Intake mental health staff determines a pretrial detainee's level of acuity
2 based on review of the mental health screening and/or face-to-face contact with the
3 detainee. If appropriate, an order is written for mental health follow-up for either mental
4 health assessment or psychiatric evaluation within 24 hours, within 72 hours, within 7–10
5 days, or as scheduled.

6 50. Timely mental health assessment is necessary to determine a pretrial
7 detainee's mental health needs and to begin treatment. The most seriously mentally ill
8 detainees must be seen face-to-face by a mental health provider, *i.e.*, a psychiatrist,
9 psychiatric nurse practitioner, or physician assistant, to begin to receive adequate care.

10 51. A quality improvement study completed in October 2012 audited the charts
11 of 192 randomly selected inmates with a length of stay of at least 21 days and who had
12 received mental health services in the Jail between October 2010 and July 2012. Of the
13 192 charts reviewed, 98 documented that the inmate had been designated as seriously
14 mentally ill, and 184 included a completed mental health assessment. The charts
15 indicated that 66% of the inmates were seen as scheduled after intake, 26% were not seen
16 as scheduled after intake, and 8% were identified as not in need of clinical follow up after
17 intake. It is unclear what percentage of seriously mentally ill detainees were not seen as
18 scheduled after intake and whether there were legitimate reasons for not seeing them as
19 scheduled.

20 52. A substantial number of pretrial detainees who report they are taking
21 psychotropic medications at the time of booking may not be seen by any mental health
22 staff. A quality improvement study of a sample of 80 inmates booked in April 2012 with
23 a length of stay of at least 7 days and who admitted taking psychotropic medications
24 found that 49 of the 80 inmates (61.3%) received a mental health assessment and 43 of
25 the 49 (87.8%) were assessed within 7 days after booking. That is, only 43 of 80 inmates
26 who admitted taking psychotropic medications and remained in the Jail for at least 7 days
27
28

1 received a mental health assessment within 7 days after booking , and 31 of 80 did not
2 receive a mental health assessment at all.

3 53. Some pretrial detainees have been moved from the intake center to close
4 custody housing without clearance from a mental health provider that it is safe to do so.

5 54. Some pretrial detainees who require psychiatric stabilization and/or are at
6 risk for suicide are sent directly from the intake center to the Mental Health Housing
7 Units (“MHU”). However, no quality improvement study or other evidence shows that
8 as of August 9, 2013, pretrial detainees who required psychiatric stabilization or were
9 identified as being at risk for suicide during the intake process consistently were timely
10 transferred to the MHU.

11 55. On August 9, 2013, Magellan Health Services administered public
12 behavioral health services for Maricopa County. Magellan’s records system for
13 monitoring its patients designated as Seriously Mentally Ill permitted the jail mental
14 health professionals to access a summary of diagnoses, prescription medications, and the
15 last date a medication was prescribed for pretrial detainees being treated through
16 Magellan. For those pretrial detainees, the system provided medication and diagnosis
17 verification without a release signed by the pretrial detainee. On April 1, 2014,
18 responsibility for public behavioral health services in Maricopa County was transferred to
19 Mercy Maricopa Integrated Care.

20 56. The system used to obtain information from Magellan cannot be used to
21 obtain treatment records for pretrial detainees receiving mental health treatment from
22 private providers or the Veterans Administration.

23 57. From October 2010 through July 2012 , the records of a substantial number
24 of pretrial detainees who reported a mental health treatment history did not include
25 signed releases of medical information. Defendants have not shown that as of August 9,
26 2013, pretrial detainees’ records included more signed releases, treatment records were
27 obtained without signed releases (e.g., through Magellan), or the records stated reasons
28

1 for not obtaining a signed release, *e.g.*, the detainee was physically unable to sign a
2 release.

3 58. Pretrial detainees who were prescribed psychotropic medications before
4 entering the Jail may not be receiving medication without interruption. A quality
5 improvement study of 86 inmates booked in October 2012 who admitted taking
6 psychotropic medications during the receiving screening and who stayed in the Jail for at
7 least eight days showed that medication verification was initiated for 93% of the inmates,
8 it was completed for 73% of the inmates, and medication was ordered for 70% of the
9 inmates. Of the 60 inmates for whom medication was ordered, 52 received a psychiatric
10 evaluation, and 8 did not receive a psychiatric evaluation even though medication was
11 ordered. For those pretrial detainees who received medication, the average length of time
12 from booking to giving first medication was 4.2 days. Of the 26 patients for whom
13 medication was not ordered, the health records of 18 had no documented rationale for not
14 ordering medications.

15 59. Defendants have not shown that as of August 9, 2013, pretrial detainees
16 who presented with serious mental health needs at intake consistently were timely
17 assessed by a mental health provider to initiate or continue necessary mental health
18 treatment, including continuation of psychotropic medications prescribed before arrest.

19 Communicable Diseases: Identification, Segregation, and Treatment

20 60. In 2006, the Centers for Disease Control and Prevention (“CDC”) updated
21 its guidelines for the prevention and control of tuberculosis (“TB”) in correctional and
22 detention facilities to include both short- and long-term confinement facilities. A
23 disproportionately high percentage of TB cases in the United States occur among persons
24 incarcerated in correctional facilities. TB is spread through the air, and immediate
25 isolation of infectious pretrial detainees can interrupt the spread of TB throughout a
26 facility.

1 61. The CDC recommends that facilities like the Maricopa County Jail screen
2 all new detainees on entry for symptoms of TB. Those with symptoms of TB should be
3 immediately placed in an Airborne Infection Isolation Room (negative pressure isolation
4 room) and evaluated promptly for TB. Those who are deemed infectious should remain
5 in isolation until treatment has rendered them noninfectious.

6 62. The CDC recommends that detainees without symptoms of TB be further
7 screened within seven days of arrival by tuberculin skin testing, QuantiFERON-TB Gold
8 blood testing, or a chest x-ray.

9 63. The CDC guidelines do not exempt detainees who had a previous negative
10 TB test on a prior jail admission.

11 64. The CDC recommends that detainees known to have HIV infection, and
12 those at risk for HIV infection but whose HIV status is unknown, have a chest x-ray as
13 part of the initial screening.

14 65. During the receiving screening at the Maricopa County Jail, pretrial
15 detainees are asked whether they have a history of TB or a positive TB skin test. If they
16 answer affirmatively, further questions are asked using a TB Symptom Assessment form.

17 66. On December 6, 2013, Defendants reported their procedure requires that
18 inmates with a risk of TB and a positive symptom assessment at intake be provided a
19 mask and chest x-ray and be housed in the infirmary. If the symptom assessment is
20 negative, a chest x-ray is ordered unless there is a chest x-ray on file that is negative. A
21 registered nurse may initiate the chest x-ray based on the Medical Director's standing
22 order. A provider subsequently reviews the chest x-ray result and orders any necessary
23 follow up visits. The standard procedure for all other inmates is to perform a skin test
24 coinciding with the initial health assessment 10-14 days after intake and repeat the skin
25 test annually.

26 67. In 2014, Defendants presented testimony at trial stating that if the receiving
27 screening indicates that a pretrial detainee may have active TB, the pretrial detainee
28

1 would be provided a mask and placed in a negative air flow room in isolation. A medical
2 provider would be contacted. The pretrial detainee would be transported to the infirmary
3 where the provider would write orders to do three sputum samples over a 24-hour period,
4 which are analyzed by the Maricopa County lab. If the sputum samples are positive, a
5 fourth sample usually would be collected and sent to the Arizona state lab for further
6 testing. At that point, the medical provider may begin treating the pretrial detainee with
7 medication.

8 68. CHS policy requires all pretrial detainees to be provided a tuberculin skin
9 test between 10 and 14 days after the receiving screening to coincide with the detainee's
10 initial health assessment and the skin test to be repeated annually.

11 69. Although the initial health assessment is to be conducted within 14 days
12 after intake for most detainees, it is not conducted for (1) newly arriving detainees who
13 have had jail-administered initial health assessments within the previous year with no
14 change in health status and (2) detainees who received initial health assessments as part
15 of a hospitalization or prenatal care visit but may not have been tested for TB.

16 70. The CHS standard operating procedure for TB management and infection
17 control states that on September 13, 2013, CHS suspended the placement of routine TB
18 skin tests because of a nationwide shortage of the necessary testing material, and "only
19 high-risk individuals will be tested/screened based on a positive symptom assessment."

20 71. The Maricopa County Jail usually identifies about three cases of TB
21 annually.

22 72. Defendants have not shown that as of August 9, 2013, pretrial detainees
23 consistently were tested for TB within 14 days after intake and the test results were
24 timely reviewed.

25 73. Defendants have not shown that as of August 9, 2013, the receiving
26 screening resulted in the timely identification, segregation, and treatment of pretrial
27 detainees with TB.
28

1 81. Defendants have not shown that as of August 9, 2013, the receiving
2 screening results in timely placement of pretrial detainees who presented with serious
3 medical and/or mental health needs at intake in units within the Maricopa County Jail or
4 facilities outside the Jail that provided access to adequate treatment.

5 82. Defendants have not shown that as of August 9, 2013, the receiving
6 screening results in providing pretrial detainees necessary medication without
7 interruption.

8 83. Defendants have not shown that as of August 9, 2013, the receiving
9 screening results in timely recognition, segregation, and treatment of pretrial detainees
10 with communicable diseases.

11 84. Defendants have not proven compliance with Paragraph 2 of the Third
12 Amended Judgment as of August 9, 2013.

13 85. The prospective relief ordered in Paragraph 2 of the Third Amended
14 Judgment remains necessary to correct a current and ongoing violation of the federal
15 right, extends no further than necessary to correct the violation of the federal right, and is
16 narrowly drawn and the least intrusive means to correct the violation.

17 **D. Ready Access to Needed Medical and Mental Health Care**

18 86. Paragraph 3 of the Third Amended Judgment provides:

19 All pretrial detainees confined in the jails shall have ready access to care to
20 meet their serious medical and mental health needs. When necessary, ,
21 pretrial detainees confined in jail facilities which lack such services shall be
22 transferred to another jail or other location where such services or health
23 care facilities can be provided or shall otherwise be provided with
appropriate alternative on-site medical services.

24 87. Ready access to care to meet serious medical and mental health needs
25 means that pretrial detainees with serious medical and mental health needs will be seen
26 face-to-face by a medical or mental health provider, *i.e.*, physician, psychiatrist,
27 physician assistant, or nurse practitioner, for timely diagnosis, treatment, and ordering of
28 lab tests, radiology, and prescription medication. In most cases, a pretrial detainee should

1 be seen by a provider for follow up. Defendants have not shown that pretrial detainees
2 with serious medical and mental health needs consistently have ready access to care to
3 meet their serious medical and mental health needs.

4 Initial Health Assessments

5 88. A CHS standard operating procedure revised September 13, 2013, states
6 that the physical examination portion of the initial health assessment must be completed
7 within 14 days of booking during the intake process, a scheduled physical exam, or the
8 first clinical visit. The physical examination may be completed by a physician, physician
9 assistant, nurse practitioner, or registered nurse who has completed the Certified Nurse
10 Examiner training. A physician reviews and signs the health assessments completed by
11 nurse practitioners, physician assistants, and registered nurses with Certified Nurse
12 Examiner training.

13 89. On June 14, 2013, Defendants projected that when the Electronic Health
14 Record system was implemented, health assessments would be completed during the
15 intake process, and all pretrial detainees would be screened for TB within 7 days of
16 booking.

17 90. Defendants state that registered nurses in the intake center refer all pretrial
18 detainees with serious acute and chronic medical conditions to a medical provider for
19 face-to-face evaluation in the intake center.

20 91. Defendants state that pretrial detainees with serious medical needs are
21 proactively assessed and treated within 24 hours after the receiving screening, including
22 ordering and accessing basic laboratory tests.

23 92. Defendants have not shown that pretrial detainees with serious medical
24 needs are proactively assessed and treated within 24 hours after the receiving screening,
25 including ordering and accessing basic laboratory tests.

1 93. Defendants have not shown that within 24 hours after the receiving
2 screening, all pretrial detainees identified as having a significant acute or chronic medical
3 condition have initial health assessments.

4 94. Pretrial detainees who were seen at a hospital within 14 days before
5 arriving at the Jail usually do not receive initial health assessments.

6 95. Pretrial detainees readmitted to the Jail who had a health assessment within
7 the past 12 months and for whom the receiving screening shows no change in health
8 status usually do not receive initial health assessments.

9 96. Pretrial detainees who do not receive an initial health assessment usually
10 will not be tested for TB because TB testing usually is performed concurrently with the
11 initial health assessment.

12 97. Pretrial detainees who do not receive an initial health assessment usually
13 will not be tested for HIV and syphilis because HIV and syphilis testing usually is
14 performed on blood drawn at the initial health assessment.

15 98. Registered nurses with Certified Nurse Examiner training perform the
16 majority of the initial health assessments.

17 99. Registered nurses with Certified Nurse Examiner training are not qualified
18 to perform comprehensive assessment of serious medical conditions and plan treatment
19 and monitoring for serious medical conditions.

20 100. Defendants have not shown that a medical provider performs the
21 comprehensive assessment and develops plans for treatment and monitoring for pretrial
22 detainees with serious medical conditions.

23 Health Needs Requests

24 101. Pretrial detainees needing or wanting to access care between appointments
25 and/or who did not identify health needs during intake may request an appointment via
26 the Health Needs Request (“HNR”) system. All HNRs are recorded electronically, along
27 with follow-up triage and appointments.
28

1 102. Defendants state that all medical HNRs are triaged within 24 hours.

2 103. Defendants state that any pretrial detainee who submits a medical HNR
3 stating a clinical symptom is seen and evaluated by a nurse within 48 hours.

4 104. Defendants state that all mental health HNRs stating clinical symptoms are
5 triaged by mental health staff within 48 hours based on face-to-face assessments.

6 105. Defendants have not shown that as of August 9, 2013, all medical HNRs
7 are triaged within 24 hours, any pretrial detainee who submits a medical HNR stating a
8 clinical symptom is seen and evaluated by a nurse within 48 hours, and all mental health
9 HNRs stating a clinical symptom are triaged face-to-face within 48 hours.

10 Laboratory and Radiology Services

11 106. Defendants have not shown that lab tests and radiological studies
12 consistently are timely performed after ordered by a provider.

13 107. Defendants have not shown that the results of lab tests and radiological
14 studies consistently are available for review and reviewed on a timely basis.

15 Alcohol and Drug Withdrawal

16 108. Alcohol and benzodiazepine withdrawal can be life threatening.

17 109. Withdrawal from opiates is a serious medical need that generally causes
18 severe pain, which may be reduced by appropriate therapy.

19 110. Both MCSO and CHS personnel are provided training regarding
20 recognition of withdrawal symptoms and procedures for reporting pretrial detainees
21 identified with withdrawal symptoms.

22 111. MCSO is notified by CHS of a pretrial detainee's need for heightened
23 monitoring via a notification form.

24 112. Pretrial detainees identified during the receiving screening as being at risk
25 for alcohol or drug withdrawal are ordered to have withdrawal assessments twice a day
26 for seven days. These assessments include a full set of vital signs and a symptom
27 assessment completed by a registered nurse.
28

1 113. In April 2013, a housing area at the Durango jail was designated for
2 withdrawing pretrial detainees who require more intensive clinical service and
3 monitoring. Only male pretrial detainees who have general population classification can
4 be housed in the withdrawal unit at the Durango jail.

5 114. The infirmary contains 60 beds, some of which can be assigned to pretrial
6 detainees undergoing severe withdrawal.

7 115. Defendants state that pretrial detainees undergoing withdrawal who are not
8 housed in the infirmary or the Durango withdrawal unit are monitored in the housing
9 units to which they are assigned.

10 116. In 2011, CHS implemented the Clinical Opiate Withdrawal Scale
11 (“COWS”) at the Durango jail to identify and assist pretrial detainees undergoing opiate
12 withdrawal. Pretrial detainees receive medication based on the results of the COWS
13 assessments.

14 117. Pretrial detainees undergoing alcohol or benzodiazepine withdrawal at the
15 Durango jail receive medications based on their Clinical Institute of Withdrawal
16 Assessments (“CIWA”). In 2013, CHS implemented the CIWA-b to better assess
17 benzodiazepine withdrawal symptoms distinguished from the CIWA-ar scale used to
18 assess alcohol withdrawal.

19 118. CHS’s COWS and CIWA protocols are not designed as a substitute for the
20 clinical judgment of a physician and may be inadequate for pretrial detainees with
21 complex multisystem illnesses.

22 119. Pregnant opiate-addicted pretrial detainees receive methadone via a Drug
23 Enforcement Agency (“DEA”) waiver secondary to medical necessity of the unborn
24 child.

25 120. The federal government controls methadone licensing through a lengthy
26 process that CHS began in 2011. Although CHS has taken steps toward obtaining
27 methadone licensing, it does not yet have the ability to treat opiate-dependent patients,
28

1 other than pregnant women, with methadone. CHS intends to continue its efforts to
2 obtain methadone licensing.

3 121. Defendants have not shown that designating a housing area at the Durango
4 jail and the availability of bed space in the infirmary have resulted in pretrial detainees in
5 withdrawal who need more intensive clinical service and monitoring actually receiving it.

6 122. Defendants have not shown that pretrial detainees in withdrawal who are
7 not placed in the Durango withdrawal unit or the infirmary consistently receive adequate
8 monitoring and treatment in their assigned housing units.

9 Medical Examination Following Use of Force

10 123. MCSO Policy CP-1 regarding Use of Force applies to any deputy, detention
11 officer, reserve deputy, or posse member who is engaged in the performance of law
12 enforcement or detention duties for MCSO.

13 124. Under MCSO Policy CP-1, before deciding whether to use force, officers
14 must consider whether there is an immediate threat to the officer or others; a subject is
15 resisting arrest or attempting to evade arrest by flight; the situation threatens the safety or
16 security of a jail's operations; the situation is tense, uncertain, or rapidly evolving; and
17 the crime is severe.

18 125. MCSO Policy CP-1 requires that an officer's decision to use force or
19 control be based on the totality of the circumstances known to the officer at the time of
20 the incident, his training, and the subject's actions. Considerations include the type of
21 resistance used by the subject.

22 126. MCSO Policy CP-1 defines the actions an officer may use in an attempt to
23 control a subject: (a) the officer's presence and identification of the officer's authority;
24 (b) verbal direction; (c) soft, empty-hand control ("techniques that have minimal chance
25 of causing injury, such as escort position, handcuffing, and leg cuffs"); (d) hard, empty-
26 hand control ("techniques that have a probability of causing injury such as closed fist
27 strikes, palm-heel strikes, kicks, and knee strikes"); (e) intermediate weapons and control
28

1 (“force that has a probability of causing injury , but is unlikely to re sult in death, when
2 properly used”); (f) deadly for ce (“force that is likely to cau se death or serious physical
3 injury”).

4 127. MCSO Policy CP-1 states: “Office rs should determine whether an
5 individual has sustained any injury as a result of the use of force or control. Appropriate
6 medical treatment should be obtained when necessary.”

7 128. MCSO Policy CP-1 leaves to the discretion of detention officers whether to
8 request a medical examination for a pretrial detainee on whom force has been used.

9 129. Following a use-of-force incident, if d detention officer s recogniz e that a
10 pretrial detainee has an injury, they take the pretrial detainee to medical staff unless the
11 pretrial detainee refuses and signs a medical re fusal form. The officers’ perception of an
12 injury is to be record ed in the operations manual and in the separate, written us e-of-force
13 report.

14 130. In addition, following a use-of-force incident, a pretrial detainee may
15 submit a medical and/or mental health Health Needs Request.

16 131. The unwritten practice is that an MCSO supervisor responds to every use of
17 force incident and the involved officer is moved away from the location of the incident.

18 132. Every month a committee that includes the commanders of all Jail facilities
19 meets to review all use-of-force reports to determine whether procedures are being
20 followed and, if not, what additional training is needed.

21 133. On this record, MCSO’s use-of -force policy an d pra ctices do not de ny
22 pretrial detainees ready access to adequate me dical, dental, or m ental health care as
23 required by Paragraph 3 of the Third Amended Judgment.

24 Copayment Policy

25 134. MCSO Policy DQ-1 s tates that inmate s may be charged a copaym ent for
26 each non-emergency medical serv ice (including dental and me ntal health care) requested
27 by an inmate and provided by CHS and a copayment for each prescription that is written.
28

1 135. Under the heading “Non -Emergency Medical Treatment,” MCSO Policy
2 DQ-1 states: “All inmates will receive the same level of healthcare, regardless of their
3 ability to pay.”

4 136. A.R.S. § 31-161 permits MCSO to charge a reasonable fee or copayment of
5 not more than ten dollars for each inmate-initiated health service that is provided; for
6 each medical visit to a physician that is referred by a physician, physician assistant, or
7 nurse practitioner; or for prescription drugs that CHA dispenses to an inmate. The statute
8 provides, “An inmate shall not be refused health services for financial reasons.”

9 137. CHS Policy J-A-01 regarding access to care states that CHS schedules a
10 health care visit for any inmate who requests health care without regard for ability to pay.

11 138. The CHS list of copayment charges, effective July 1, 2013, set the amount
12 of copayment at \$5.00 for nursing assessments and general health medications (each
13 medication and each refill). It set the amount at \$10.00 for seeing a medical doctor, nurse
14 practitioner, physician assistant, dentist, and specialty provider. It also set the amount at
15 \$10.00 for admission to a hospital, the infirmary, or the MHU. Although the list of
16 charges does not say copayment will be charged only on inmate-initiated services, it does
17 say that no one will be denied care based on their ability to pay for services and that the
18 copayment will occur “if you have money in your inmate fund account.”

19 139. The MCSO Inmate Rules and Regulations, which are provided in English
20 and Spanish to inmates at booking, state: “There is no charge for care that the medical
21 staff or mental health services staff initiates.”

22 140. The MCSO Inmate Rules and Regulations also state: “You **WILL NOT**
23 **BE REFUSED** health care services because you are indigent. The medical staff has no
24 knowledge of your account balance.”

25 141. The MCSO Inmate Rules and Regulations also inform inmates that, if a
26 copayment is charged, it will be deducted from the inmate’s Inmate Fund Account. If an
27 inmate’s account does not have sufficient funds to cover the copayment, a record of
28

1 balance due will be kept, and the amount owed will be deducted when money is
2 deposited into the account.

3 142. Inmates may purchase food from the Canteen, which is in addition to meals
4 provided for all inmates. Canteen charges are paid from Inmate Fund Accounts. The
5 MCSO Inmate Rules and Regulations caution inmates that when ordering from the
6 Canteen, they should keep in mind that any health care copayments will be deducted
7 from their Inmate Fund Accounts.

8 143. If a pretrial detainee has money in his Inmate Fund Account, he may be
9 charged a copayment for non-emergency medical, dental, and mental health services and
10 for prescription medications that he requests, which may reduce the amount that he can
11 spend at the Canteen.

12 144. If a pretrial detainee does not have money in his Inmate Fund Account, he
13 will not be denied non-emergency medical, dental, and mental health services and
14 prescriptions.

15 145. If a pretrial detainee who has money in his Inmate Fund Account avoids
16 seeking non-emergency medical, dental, and mental health services and prescriptions
17 because he prefers to spend money at the Canteen, he may do so, just as he is able to do
18 outside of the Maricopa County Jail.

19 146. Most of pretrial detainees' serious medical, dental, and mental health
20 conditions that are likely to cause serious illness and needless suffering should be
21 identified during the receiving screening or initial health assessment. Therefore, most of
22 the constitutionally required medical and mental health services should be initiated by
23 CHS staff, not by pretrial detainees.

24 147. On this record, the MCSO/CHS copayment policies and practice do not
25 deny pretrial detainees ready access to adequate medical, dental, or mental health care as
26 required by Paragraph 3 of the Third Amended Judgment.

27
28

Mental Health Care: Access to Adequate Care

1
2 148. CHS employs different levels of mental health staff at the Jail. Mental
3 health professionals are licensed professional counselors or licensed social workers.
4 They review and triage mental health Health Needs Requests submitted by inmates and
5 referrals made by detention staff and medical providers. They also perform mental health
6 assessments, specialized treatment planning, re-entry planning, and individual and group
7 counseling. Mental health associates work under the supervision of a mental health
8 professional and primarily perform functions related to re-entry planning. Psychologists
9 provide services for pretrial detainees with more complex needs, but do not prescribe
10 medications.

11 149. Psychiatrists are physicians with an M.D. or D.O. degree, who provide
12 psychiatric evaluations and prescribe psychiatric medications. CHS nurse practitioners
13 and physician assistants provide the same functions.

14 150. Mental health office assistants obtain inmates' records and prescription
15 verifications from outside the Jail and assist in scheduling appointments for inmates.

16 151. The term "mental health provider" refers to a psychiatrist, psychologist,
17 psychiatric physician assistant, or a psychiatric nurse practitioner.

18 152. Defendants state that pretrial detainees who submit a mental health Health
19 Needs Request stating clinical symptoms are assessed face-to-face by mental health staff
20 within 48 hours.

21 153. The Maricopa County Jail provides multiple types of mental health care for
22 pretrial detainees housed in general population units, segregation or close custody units,
23 the infirmary, and the Mental Health Unit at the Lower Buckeye jail.

24 154. Defendants have created areas in each jail facility in which mental health
25 appointments can be conducted with sound privacy.

26 155. Medication management, individual therapy, group therapy, cognitive
27 restructuring group, release planning group, and other forms of psychosocial treatment
28

1 are provided through outpatient clinics for pretrial detainees placed in general population
2 housing.

3 156. Pretrial detainees who are classified as close custody, administrative
4 segregation, disciplinary segregation, or Special Management Unit do not have access to
5 all of the mental health treatment programs available to those in the general population.
6 However, they may receive psychiatric prescription medication, psychiatric medication
7 management by a psychiatrist, and individual psychological counseling, and they may
8 participate in programs that involve handouts and worksheets, such as for substance
9 abuse or personal growth.

10 157. When mental health providers are in the segregated housing units, they
11 provide care in the anteroom of the cells, which provides sound privacy, but not visual
12 privacy. The providers are given an MCSO radio to ensure that the detention staff can be
13 contacted when needed, but detention staff does not remain within earshot of the
14 treatment.

15 158. The most seriously mentally ill inmates and those determined to be at risk
16 of harming themselves or others are housed in the Mental Health Unit at the Lower
17 Buckeye jail.

18 159. All of the cells in the Mental Health Unit are single cells.

19 160. The Mental Health Unit is not a licensed inpatient psychiatric hospital.

20 161. Pretrial detainees who need inpatient psychiatric care may be placed in the
21 Mental Health Unit while CHS staff attempts to get them admitted to the state psychiatric
22 hospital. Although Defendants cannot control whether pretrial detainees who need
23 inpatient psychiatric care will be admitted to the state psychiatric hospital, Defendants are
24 responsible for identifying those detainees and making reasonable efforts to obtain their
25 admission to the state psychiatric hospital.

26 162. The Mental Health Unit includes subunits for different levels of care,
27 including acute, sub-acute, and stepdown treatment subunits. A stepdown placement is
28

1 interim housing where treatment can continue until the inmate is sufficiently stable to
2 move to general population housing.

3 163. Group programs are provided in the treatment subunits of the Mental
4 Health Unit.

5 164. Some pretrial detainees are transferred directly from an acute unit to
6 general population housing without transition placement within the Mental Health Unit,
7 they are not stable enough to remain in general population housing, and they are
8 transferred back to the Mental Health Unit.

9 165. CHS requires that pretrial detainees transferred out of the Mental Health
10 Unit be seen by a mental health provider within 24–48 hours after the transfer.

11 166. One subunit of the Mental Health Unit houses inmates classified at a
12 security level greater than general population regardless of their level of acuity.

13 167. In May and June 2010, therapeutic cubicle spaces were built in two
14 subunits of the Mental Health Unit in which mental health providers can conduct group
15 therapy sessions with high security or mixed classification pretrial detainees.

16 168. Evaluating a pretrial detainee's mental health condition, developing or
17 modifying the pretrial detainee's treatment plan, and deciding when a pretrial detainee
18 should be placed in or discharged from a specific facility to obtain appropriate mental
19 health care must be performed by a mental health provider after the provider has assessed
20 the pretrial detainee face-to-face in space that at least provides sound privacy.

21 169. Many pretrial detainees with serious mental health needs do not remain in
22 the Jail long enough to receive a full psychiatric evaluation, but every pretrial detainee
23 with a mental health condition identified as urgent by detention, intake, medical, or
24 mental health staff can and must be seen face-to-face by a mental health provider within
25 24 hours of identification.

26 170. Although there are criteria for placement in each level of mental health
27 care, including subunits within the Mental Health Unit, Defendants have not shown that
28

1 the placement criteria are clearly articulated in writing and consistently and timely
2 applied.

3 171. Defendants have not shown that a mental health provider determines the
4 placement of each pretrial detainee needing mental health care after the provider has
5 performed a face-to-face assessment, especially for admission into and discharge from
6 the Mental Health Unit.

7 172. Defendants have not shown that pretrial detainees placed in acute units of
8 the Mental Health Unit are provided sufficient opportunity to become clinically stable in
9 stepdown treatment units before they are transferred out of the Mental Health Unit.

10 173. Defendants have not shown that pretrial detainees transferred out of the
11 Mental Health Unit are assessed by a mental health professional or provider within 24–48
12 hours after the transfer.

13 174. Defendants have not shown that a mental health provider timely assesses
14 face-to-face each pretrial detainee with a mental health condition identified as urgent by
15 detention, intake, medical, or mental health staff.

16 175. Defendants have not shown that pretrial detainees who submit mental
17 health Health Needs Requests stating clinical symptoms are assessed face-to-face by
18 mental health staff within 48 hours.

19 Mental Health Care: Segregation/Isolation

20 176. Many pretrial detainees in the Maricopa County Jail are housed in single
21 cells with limited or no time outside of their cell and limited or no interaction with other
22 people during a 24-hour day.

23 177. The longer a pretrial detainee with mental illness is in isolation, the greater
24 the risk the pretrial detainee's mental condition will deteriorate.

25 178. The record does not show how many pretrial detainees are placed in
26 segregated confinement for specific lengths of time or how many of those have or
27 possibly have serious mental illness.
28

1 179. Mental health staff is not consulted before a pretrial detainee identified as
2 having serious mental health needs is classified by detention staff as close custody or
3 administrative segregation.

4 180. Weekly mental health rounds in segregation are conducted for pretrial
5 detainees identified as having serious mental health needs to identify adverse effects of
6 segregation on their mental health status. The record does not show how often pretrial
7 detainees identified as having serious mental illness and placed in segregation actually
8 are assessed by a mental health professional and seen face-to-face by a mental health
9 provider.

10 181. Some pretrial detainees do not manifest symptoms of serious mental illness
11 until after placement in segregated confinement.

12 182. Pretrial detainees placed in segregated confinement are not provided mental
13 health assessments if they have not been identified as seriously mentally ill, but they may
14 submit mental health HNRs and/or detention staff may refer them for mental health care.

15 183. In the Mental Health Unit, pretrial detainees confined to an intake, acute, or
16 suicide watch subunit remain in their cells 24 hours a day, except when taken out for a
17 health care assessment or treatment. Pretrial detainees in sub-acute units are offered
18 recreation and use of a dayroom alone for one hour daily. Pretrial detainees in a close
19 custody subunit are permitted no contact with other inmates and are moved from cells
20 only in leg restraints and handcuffs, escorted by two officers. In the stepdown treatment
21 subunits, pretrial detainees are allowed out of their cells for seven hours a day and can
22 have contact with other inmates.

23 184. Defendants have not shown that pretrial detainees are timely transferred
24 from more restrictive to less restrictive subunits of the Mental Health Unit when their
25 mental health condition permits.

26
27
28

1 185. Face-to-face communication with mental health staff at least twice per
2 week would mitigate the risks of isolation inherent in segregated confinement for pretrial
3 detainees with serious mental illness.

4 186. Defendants have not shown that seriously mentally ill pretrial detainees
5 who are confined to single cells for 22 or more hours a day have face-to-face
6 communication with mental health staff at least twice per week.

7 187. Defendants have not shown that mental health staff is consulted before a
8 pretrial detainee identified as being seriously mentally ill is placed in any type of
9 segregated confinement.

10 Mental Health Care: Involuntary Treatment/Use of Force

11 188. Involuntary treatment includes the use of restraints, the use of seclusion,
12 and forced medication, which can place pretrial detainees at substantial risk of serious
13 harm.

14 189. Mental health staff have specialized training that makes them especially
15 equipped to de-escalate a potential confrontation with detention staff and avoid the need
16 for use of force or involuntary treatment.

17 190. Some use of force incidents arise because of a mental health order and can
18 be avoided by the provider modifying the order.

19 191. Defendants have not shown that a mental health provider or professional is
20 consulted before each planned involuntary treatment or use of force on a seriously
21 mentally ill pretrial detainee.

22 192. Defendants have not shown that mental health staff is involved in the
23 implementation of any planned involuntary treatment or use of force on a seriously
24 mentally ill pretrial detainee.

25 Mental Health Care: Discipline

26 193. Seriously mentally ill pretrial detainees should not be disciplined for
27 behavior resulting from mental illness without the approval of a mental health provider.
28

1 appointment in an outpatient clinic within 24 hours unless mental health staff can see him
2 while he is in the intake center.

3 203. Mental health staff decides whether an inmate should be placed in a safe
4 cell.

5 204. Defendants have not shown that mental health staff consistently assesses
6 each pretrial detainee discharged from a safe cell within 24 hours of discharge.

7 205. MCSO Policy DA-5 states that certain signs and symptoms can often
8 foretell a possible suicide attempt and directs detention officers to err on the side of
9 caution by alerting CHS staff immediately if they have any doubt about whether an
10 inmate is suicidal.

11 206. MCSO Policy DA-5 states that most suicides occur within the first 48 hours
12 of incarceration.

13 207. MCSO Policy DA-5 also states: "Isolation greatly increases the likelihood
14 of suicide; therefore, a potentially suicidal inmate shall never be placed into isolation
15 unless the inmate is constantly supervised."

16 208. MCSO Policy DA-5 provides: "If officers have a reason to believe that an
17 inmate may be suicidal, they shall take immediate action which includes, but is not
18 limited to" reporting any signs or symptoms immediately to CHS staff, removing the
19 inmate's clothing and placing the inmate in a suicide-resistant blanket or smock, and
20 placing the inmate into a suicide-resistant cell or safe cell with "direct, continuous
21 observation until a treatment plan is determined by medical staff."

22 209. MCSO Policy DA-5 requires that all jail personnel who interact with
23 inmates be trained regarding understanding, identifying, and managing suicidal inmates.
24 It further requires that personnel involved in making decisions about the initiation of a
25 suicide watch complete more specialized training provided by a licensed mental health
26 professional using curriculum approved by CHS.

27
28

1 210. Defendants have not shown that they comply with MCSO Policy DA-5's
2 requirements that a potentially suicidal inmate never be placed into isolation unless the
3 inmate is constantly supervised and that a potentially suicidal inmate is placed into a
4 suicide-resistant cell or safe cell only with "direct, continuous observation until a
5 treatment plan is determined by medical staff."

6 Mental Health Care: Specialized Training for Detention Officers

7 211. Defendants provide training for detention officers related to mental illness
8 and suicide prevention. The training provides general awareness of these subjects, but
9 does not—and should not—train detention officers to substitute for mental health staff.

10 212. Detention officers perform an important role in identifying pretrial
11 detainees who are at risk and referring them to mental health staff for prompt assessment.

12 213. Detention officers perform a critical role in maintaining institutional
13 security and protecting the safety of pretrial detainees and others, especially during
14 planned and unplanned uses of force, suicide prevention, and disciplinary actions.

15 214. Whenever policies or procedures regarding planned and unplanned uses of
16 force, suicide prevention, disciplinary actions, and communications between MCSO and
17 CHS staff regarding pretrial detainees with mental illness are adopted or amended,
18 Defendants must continue to train both MCSO and CHS staff to implement them.

19 Ready Access to Needed Medical and Mental Health Care

20 215. Defendants have not proven compliance with Paragraph 3 of the Third
21 Amended Judgment as of August 9, 2013.

22 216. The prospective relief ordered in Paragraph 3 of the Third Amended
23 Judgment remains necessary to correct a current and ongoing violation of the federal
24 right, extends no further than necessary to correct the violation of the federal right, and is
25 narrowly drawn and the least intrusive means to correct the violation.

26 **E. Prescription Medications Without Interruption**

27 217. Paragraph 4 of the Third Amended Judgment provides:
28

1 Defendants shall ensure that the pretrial detainees' prescription medications
2 are provided without interruption where medically prescribed by
3 correctional medical staff.

4 218. The CHS intake process requires all inmates taking prescription
5 medications to be seen by a registered nurse, and medication verification to be initiated.

6 219. Defendants attribute some past delay in medication verification to not
7 having a mental health office assistant on weekends, but now weekend staffing has been
8 added for the purpose of obtaining inmate medical and mental health records.

9 220. During the intake process, some inmates do not report they have been
10 prescribed medications, some report medications they have not been taking recently, and
11 some cannot identify a pharmacy or provider who can verify their prescriptions. Some
12 pharmacies and providers do not respond promptly to prescription verification requests.

13 221. In some cases, medications have not been timely ordered at intake, and
14 medications have been discontinued at intake without documenting a reason for doing so.

15 222. The new health screening process may have increased the likelihood that
16 medications are provided without interruption unless clinically justified, but Defendants
17 have not produced evidence of that yet.

18 223. The newly implemented Electronic Health Records system likely has or
19 will result in more information being documented in pretrial detainees' health records,
20 but Defendants have not produced evidence of that yet.

21 224. Pretrial detainees' health records should show timely administration of
22 prescription medications or reasonably diligent efforts to administer all medications
23 prescribed. If a medication is not administered as prescribed, a detainee's health record
24 should show whether the detainee signed a written refusal form, affirmatively refused
25 verbally or nonverbally, did not appear for medication administration without
26 explanation, or did not appear for medication for known reasons, such as a court
27 appearance.
28

1 225. Even when prescriptions have been verified, there may be clinical reasons
2 for a medical or mental health provider to modify or discontinue a pretrial detainee's
3 previous prescription. Pretrial detainees' records should include the provider's clinical
4 reasons for each prescription modification and discontinuance.

5 226. Psychotropic medications should not be prescribed, altered, renewed, or
6 discontinued without a face-to-face examination by a mental health provider in an area
7 that affords sound privacy.

8 227. CHS requires quarterly audits of placement of inmates on psychotropic
9 medications and timely renewal of medications, but Defendants have not shown that
10 psychotropic medications are administered without interruption.

11 228. CHS conducted a psychotropic medication audit for a sample of 81 inmates
12 who were booked in July 2013, admitted to taking psychotropic medications, and
13 remained in the Jail for at least 7 days. Of the 81 inmates in the sample, 66 (81%) had
14 medication verification initiated, 54 (67%) had the medication verification completed, 52
15 (64%) received a psychiatric evaluation, and the average number of days from booking to
16 psychiatric evaluation for the 52 who received a psychiatric evaluation was 4.8. Of the
17 49 inmates for whom medication was ordered, 45 received a psychiatric evaluation. Of
18 the 32 health records of the inmates for whom medication was not ordered, 8 contained
19 rationale for not ordering medication and 24 did not.

20 229. Defendants have not proven compliance with Paragraph 4 of the Third
21 Amended Judgment as of August 9, 2013.

22 230. The prospective relief ordered in Paragraph 4 of the Third Amended
23 Judgment remains necessary to correct a current and ongoing violation of the federal
24 right, extends no further than necessary to correct the violation of the federal right, and is
25 narrowly drawn and the least intrusive means to correct the violation.
26
27
28

1 **F. Electronic Records Management**

2 231. As of August 2013, CHS used its electronic Jail Management System to
3 manage medical records, track inmate locations for pretrial detainees with medical needs,
4 and produce reports necessary for health care staff and detention officers to provide
5 access to adequate health care until the permanent Electronic Health Records system was
6 fully implemented.

7 232. The Jail Management System included urgency codes to triage inmates and
8 electronically schedule appointments. It generated a daily schedule to manage and
9 prioritize appointments.

10 233. The Electronic Health Records system includes the expanded electronic
11 integrated health screen that identifies serious conditions and veterans, which was
12 implemented at the 4th Avenue intake center on August 5, 2013.

13 234. The Electronic Health Records system tracks HNRs, including date of
14 submission, date triaged, and date the inmate was seen.

15 235. In 2013 CHS purchased 80 laptop computers that nursing staff can use with
16 the Electronic Health Records system during medication passes so that medication
17 administration can be tracked in real-time.

18 236. In August 2013, CHS completed its wireless network.

19 237. In September 2013, the Electronic Health Records system was fully
20 implemented in all Jail facilities.

21 238. An electronic health records system is not itself constitutionally required,
22 but managing the health records, housing locations, HNRs, prescriptions, appointment
23 scheduling, and necessary follow up for thousands of pretrial detainees to ensure ready
24 access to health care and continuity of medications likely would be impossible without
25 one.

1 239. Remedies that will be ordered require Defendants to collect and summarize
2 data showing they have implemented certain policies and procedures. Defendants may,
3 but are not required to, obtain the data from the Electronic Health Records system.

4 **G. Remedies**

5 240. Defendants have had adequate opportunity to propose remedies for current
6 and ongoing Jail policies and practices that Plaintiffs contend violate constitutional
7 requirements, respond to Plaintiffs' proposed remedies for those constitutional violations,
8 and show whether any of the challenged Jail policies and practices are reasonably related
9 to legitimate governmental objectives, such as Jail security and the safety of inmates or
10 staff. Defendants had those opportunities for nearly five years before they filed this
11 Motion to Terminate.

12 241. Having found constitutional violations, the Court may not allow
13 constitutional violations to continue merely because remedies intrude into functions of
14 prison administration, and Defendants' history of noncompliance with prior orders
15 justifies greater court involvement than usually permitted.

16 242. Having found constitutional violations, the Court will order remedies that
17 do not exactly track constitutional standards but that are practical measures necessary to
18 correct constitutional violations.

19 243. For each constitutional violation found, Defendants will be ordered to (1)
20 adopt new policies or amend existing policies within 60 days as specifically ordered, (2)
21 implement the new or amended policies within 150 days, (3) collect and summarize
22 compliance and results/outcome data for a period of 180 days after implementation of the
23 new or amended policies, and (4) report to the Court and to Plaintiffs documentation of
24 their completion of each of the three preceding requirements within 15 days after each
25 deadline.

26 244. If Defendants comply with this Order and its deadlines, within one year
27 they will demonstrate that prospective relief no longer remains necessary to correct any
28

1 current and ongoing violation of Plaintiffs' constitutional rights, and Court-ordered relief
2 may be terminated before the PLRA permits another motion to terminate. 18 U.S. C.
3 § 3626(b)(1).

4 **H. Fourth Amended Judgment to Be Entered**

5 245. Based on the foregoing findings of fact and conclusions of law,
6 Defendants' motion to terminate the Third Amended Judgment will be denied, and
7 additional prospective relief will be ordered to remedy ongoing constitutional violations.
8 The Court will enter by separate document a Fourth Amended Judgment that restates the
9 Third Amended Judgment and adds the specific relief required by this Order.

10 **I. Attorney Fees**

11 246. Pursuant to 42 U.S.C. § 1988(b) for the award of attorney fees, Plaintiffs
12 are the prevailing party on Defendants' Motion to Terminate Third Amended Judgment
13 on Behalf of Correctional Health Services (Doc. 2142).

14 247. Subject to the limitations of 42 U.S.C. § 1997e(d), Plaintiffs are entitled to
15 award of attorney fees incurred in defending against the Motion to Terminate. Fees may
16 be claimed under the procedures in Fed. R. Civ. P. 54(d)(2) and LRCiv 54.2 upon entry
17 of this Order. If enforcement proceedings become necessary, future fees may be claimed
18 and will be determined and awarded at appropriate intervals during the enforcement
19 proceedings.

20 **V. ORDER**

21 Based on the foregoing findings of fact and conclusions of law,
22 IT IS ORDERED that Defendants Fulton Brock, Don Stapley, Andrew Kunasek,
23 Max Wilson and Mary Rose Wilcox's Motion to Terminate Third Amended Judgment on
24 Behalf of Correctional Health Services (Doc. 2142) is denied.

25 IT IS FURTHER ORDERED:

- 26 1. By **December 1, 2014**, Defendants will adopt policies and procedures or
27 amend existing policies and procedures to require the following:
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- a. A registered nurse will perform the receiving screening for each pretrial detainee processed in the 4th Avenue jail intake center.
- b. If the receiving screening indicates a pretrial detainee is suffering from a serious acute or chronic health condition, a physician, physician assistant, or nurse practitioner will conduct a face-to-face examination of the pretrial detainee within 24 hours after the receiving screening.
- c. If the receiving screening indicates a pretrial detainee has symptoms of tuberculosis, the pretrial detainee immediately will be placed in an Airborne Infection Isolation Room and evaluated promptly for tuberculosis.
- d. If the receiving screening indicates a pretrial detainee is known to have HIV infection or is at risk for HIV infection with unknown status, a chest x-ray of the pretrial detainee will be performed and the results reviewed by a physician, physician assistant, or nurse practitioner before the pretrial detainee is placed in a housing unit.
- e. If a pretrial detainee has a positive mental health screening or does not respond to all of the mental health screening questions, the detainee will be assessed by mental health staff while the pretrial detainee is in the intake center. The mental health staff will identify the urgency with which the pretrial detainee must be seen by a mental health provider, *i.e.*, a psychiatrist, psychiatric nurse practitioner, or physician assistant.
- f. If the receiving screening indicates a pretrial detainee is at risk for suicide, a psychiatrist, psychiatric nurse practitioner, or physician assistant will conduct a face-to-face assessment of the pretrial detainee within 24 hours after the receiving screening.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- g. Pretrial detainees will be tested for tuberculosis within 14 days after the receiving screening unless they have been tested with negative results within the past year.
- h. Pretrial detainees with serious acute and chronic medical conditions will be evaluated face-to-face by a medical provider and will receive an initial health assessment within 24 hours after the receiving screening.
- i. A medical provider will develop plans for treatment and monitoring for pretrial detainees with serious medical conditions.
- j. All medical Health Needs Requests will be triaged within 24 hours of their submission.
- k. Each pretrial detainee who submits a medical Health Needs Request stating or indicating a clinical symptom will be seen by a nurse within 48 hours of submitting the Health Needs Request.
- l. When a physician, physician assistant, or nurse practitioner orders a lab test or radiological study, the physician, physician assistant, or nurse practitioner will identify the urgency with which the test or study must be performed, *e.g.*, within 24 hours, 72 hours, or 7–10 days, and the urgency with which the results of the test or study must be returned. The test or study will be performed within the timeframe ordered by a physician, physician assistant, or nurse practitioner.
- m. Pretrial detainees identified during the receiving screening as being at risk of serious harm from alcohol or drug withdrawal will be assessed by a registered nurse twice a day for at least seven days regardless of whether they are assigned to a housing unit designated for withdrawing inmates or their classification status. The nurse will

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

document each assessment and identify the urgency with which the pretrial detainee should be seen by a physician, physician assistant, or nurse practitioner. If a pretrial detainee is not seen face-to-face by a physician, physician assistant, or nurse practitioner within the timeframe recommended by the nurse, the reason will be documented in the pretrial detainee's medical record.

- n. All mental health Health Needs Requests stating or indicating a clinical symptom will be triaged face-to-face within 48 hours of their submission.
- o. Pretrial detainees with a mental health condition identified as urgent by detention, intake, medical, or mental health staff will be seen face-to-face by a mental health provider within 24 hours of the identification.
- p. Mental health providers will assess pretrial detainees in an area outside of their cells that affords sound privacy except when there are legitimate safety, security, and treatment reasons for not doing so.
- q. Defendants will adopt and implement written criteria for placing pretrial detainees in each level of mental health care, including subunits within the Mental Health Unit.
- r. A mental health provider will determine the placement of each seriously mentally ill pretrial detainee after performing a face-to-face assessment, including upon admission into, transfer within, and discharge from the Mental Health Unit.
- s. Pretrial detainees discharged from the Mental Health Unit will be assessed by mental health staff within 48 hours after discharge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- t. MCSO will consult with CHS mental health staff before placing a seriously mentally ill pretrial detainee in any type of segregated confinement.
- u. Seriously mentally ill pretrial detainees who are confined to single cells for 22 or more hours a day will have face-to-face communication with mental health staff at least twice per week.
- v. A mental health provider or professional will be consulted before each planned use of force or involuntary treatment on a seriously mentally ill pretrial detainee.
- w. Mental health staff will be involved in the implementation of any planned use of force or involuntary treatment on a seriously mentally ill pretrial detainee.
- x. Defendants will adopt and implement a written policy regarding the use of discipline for behavior resulting from serious mental illness.
- y. Defendants will adopt and implement a written policy regarding the use of isolation in a disciplinary segregation unit as a sanction against seriously mentally ill pretrial detainees.
- z. Defendants will adopt and implement a written policy requiring that mental health staff be consulted regarding discipline of any seriously mentally ill pretrial detainee.
- aa. A potentially suicidal pretrial detainee will not be placed in isolation without constant supervision.
- bb. A potentially suicidal pretrial detainee will be placed into a suicide-resistant cell or safe cell only with “direct, continuous observation until a treatment plan is determined by medical staff.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

cc. When a pretrial detainee is discharged from suicide watch or a safe cell, the pretrial detainee will be assessed by mental health staff within 24 hours of discharge.

dd. Defendants will document in pretrial detainees' health records evidence of timely administration of prescription medications or reasonably diligent efforts to administer all medications prescribed and explanation for any delay.

ee. A pretrial detainee's psychotropic medications will not be prescribed, altered, renewed, or discontinued without a face-to-face examination by a psychiatrist, psychiatric physician assistant, or psychiatric nurse practitioner in an area that affords sound privacy.

2. By **December 16, 2014**, Defendants will file with the Court a copy of each policy adopted or amended to comply with this Order and identify the specific policy provisions that demonstrate compliance.

3. By **February 27, 2015**, Defendants will fully implement each of the policies ordered herein, including hiring additional staff, providing training, and making facility modifications, as needed.

4. By **March 16, 2015**, Defendants will file with the Court a summary of actions taken to implement each of the policies.


5. Beginning **March 2, 2015**, Defendants will collect and summarize data for a period of 180 days that shows the extent to which Defendants are complying with this Order.

6. On **September 15, 2015**, Defendants will file with the Court a report of the data collected and summarized in compliance with this Order.

IT IS FURTHER ORDERED that, for the convenience of the parties, those provisions of the Third Amended Judgment that remain in effect and the additional

1 prospective relief granted by this Order are restated in the Fourth Amended Judgment
2 entered this day.

3 Dated this 30th day of September, 2014.
4

5
6 

7 _____
8 Neil V. Wake
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28