UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

J.H., et al.,

Plaintiffs,

v.

HINDS COUNTY, MISSISSIPPI,

Defendant.

Civil Action No.
3:11-cv-327-DPJ-FKB

ORAL ARGUMENT REQUESTED

AMENDED MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AN EXTENSION OF THE CONSENT DECREE AND A CORRECTIVE ACTION PLAN OR, IN THE ALTERNATIVE, CONTEMPT

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The Plaintiffs, children confined at Henley-Young Juvenile Justice Center ("Henley-Young"),[1] respectfully submit this amended memorandum of law in support of their Amended Motion for an Extension of the Consent Decree and a Corrective Action Plan or, in the Alternative, Contempt ("the Motion").[2] Pursuant to Local Rule 7(b)(6)(A), the Plaintiffs respectfully request oral argument on this motion.

PRELIMINARY STATEMENT

Hinds County (the "County") for nearly seven years has failed to comply with key substantive provisions of the court-ordered consent decrees in this case,[3] including in the areas of suicide prevention, educational and rehabilitative programming, and medical care, resulting in ongoing violations of the federal rights of vulnerable and disabled children.[4] Plaintiffs respectfully move this Court for relief to address the County's continued failure to achieve substantial compliance with fourteen key consent decree provisions in six critical areas ("Key Provisions"). These are in structured educational and rehabilitative programming (Provisions 3.1, 4.1); medical care (Provisions 12.1, 12.2); individualized treatment plans (Provisions 5.1, 5.2,

[1] Agreed Order Granting Approval of Settlement Agreement and Certifying a Settlement Class 2, Mar. 28, 2012, ECF No. 32 (defining the settlement class as comprised of all children who are currently, or who will in the future be, confined at Henley-Young).

[2] This amends Plaintiffs' previously-filed motion and memorandum. Mot. for an Extension of the Consent Decree and a Correction Action Plan or, in the Alternative, Contempt, Oct. 31, 2018, ECF No. 128; Memorandum of Law in Support of Plaintiffs' Mot. for an Extension of the Consent Decree and a Corrective Action Plan or, in the Alternative, Contempt, Oct. 31, 2018, ECF No. 129. Defendant's counsel advised Plaintiffs' counsel on November 13, 2018, that the County does not oppose this amended filing.

[3] The Second Amended Consent Decree is referred to as the "consent decree" and cited to as "Consent Decree." Second Am. Consent Decree ("Consent Decree"), Mar. 30, 2018, ECF No. 120. The Settlement Agreement in this case is referred to as the "original consent decree" and cited to as "Settlement Agreement." Settlement Agreement, Mar. 28, 2012, ECF No. 33. Children under adult court jurisdiction are referred to as both JCAs (juveniles charged as adults) and CTAs (children tried as adults).

[4] Am. Compl. 14, June 6, 2011, ECF No. 6 (alleging that "[a] significant number of the youth who are detained at Henley-Young live with disabilities—including various forms of mental illness and learning disabilities," and citing research finding that "60–70% of youth in [] Henley-Young require mental health services").

5.3, 5.4); mental health care (Provisions 13.3, 13.4, 13.5, 13.6); suicide prevention (Provision 14.4); and Plaintiffs' access to records (Provision 18.1). As relief, Plaintiffs request a court order extending the consent decree and requiring that the County develop a corrective action plan ("CAP") with input from Plaintiffs to ensure that the resources required to achieve consent decree compliance are timely identified. Such relief is warranted at this time, and ordering it would be an appropriate exercise of this Court's authority.[5]

The relief requested is necessary. The County has not achieved substantial compliance with any of the Key Provisions, resulting in actual and heightened risk of harm to Plaintiffs. Relief is warranted at this time because the County has not achieved substantial compliance with *any* provision since the Court entered this consent order seven months ago. No evidence in the experts' recently-filed reports support the conclusion that the County is likely, within the next five months, to achieve substantial compliance with the Key Provisions. According to the most recent report of the Federal Court Monitor ("Monitor"), Mr. Leonard Dixon, the County remains out of substantial compliance with 42 of 47 (89%) of all of the substantive provisions in the consent decree. Thirteen and eleven provisions were eliminated from the consent decree for sustained substantial compliance in 2016 and 2018, respectively. Since this Court's 2014 contempt holding, the County has eliminated provisions at an average rate of six provisions per year. Coupled with the subject matter experts' recent reports, no colorable argument can be made that the County is on track to comply with the Key Provisions, or all 42 remaining substantive provisions, before March 2019.

To the extent a lack of resources or facility space are to blame for lack of progress, which

[5] Plaintiffs have advised the County we would seek Court intervention. *See, e.g.*, Ex. 1, Letter from Pls. re: *Request to Discuss Plans for Compliance with Second Am. Consent Decree* (Oct. 10, 2018); Ex. 2, Letter from Pls. re: *Responding to Judge Jordan's Requests from Status Conf. of July* 25, 2018 (July 27, 2018).

Plaintiffs believe to be the case, a remedy of developing a CAP aimed at addressing limiting factors is critical at this stage. Plaintiffs' position regarding the need for space is based on the findings and recommendations of the Monitor, his experts, and those of the court-appointed monitor in *U.S. v. Hinds County, et al.* No. 3:16-cv-489-WHB-JCG (S.D. Miss., June 23, 2016) ("Hinds County Jail Case") (entering a federal court-ordered consent decree that applies to the conditions that Hinds County detains children under adult court jurisdiction); *see, e.g.*, Ex. 3, Summary Chart III: Monitor and Expert Findings and Recommendations Re: Facility Space.

The relief requested is appropriate. Plaintiffs request an extension of the consent decree until March 2021 and a court order directing the affirmative relief of CAP development. As a threshold matter, the extension is authorized under the Prison Litigation Reform Act ("PLRA") as necessary to correct a current and ongoing violation of Plaintiffs' federal rights. Also, the Court may grant the affirmative relief requested pursuant to two independent powers: (1) the Court's express enforcement powers contained within the consent decree ("discretionary relief"), and (2) the Court's inherent power to order coercive or compensatory remedies to effectuate a consent judgment pursuant to a finding of contempt ("remedial relief"). Whether discretionary or remedial in nature, the affirmative relief requested is narrowly drawn to fit within the bounds of the PLRA.

SUMMARY OF THE ARGUMENT

In 2012, this Court entered a consent judgment requiring that the County substantially comply with 71 provisions necessary to address ongoing violations of the federal rights of the children detained at Henley-Young. The consent decree settled the claims brought by Plaintiffs against the County in 2011, alleging violations of the constitutional rights of children imprisoned at Henley-Young under the First, Eighth, and Fourteenth Amendments of the United States

Constitution. *See generally* Am. Compl., ECF No. 6. The lawsuit resulted from an investigation initiated nearly a decade ago, in 2009, which resulted in a failed Memorandum of Understanding between the County and Plaintiff Disability Rights Mississippi. *See, e.g.*, *id*. at 16–18, 19; Mem. of Understanding Between Hinds Cty., Miss. and Mississippi's Protection and Advocacy System, Disability Rights Miss. (DRMS) 1, 5, June 6, 2011, ECF No. 6-2.

The prospective relief in the consent decree was adjudged to conform with the PLRA as (a) necessary to correct an ongoing violation of a federal right, (b) extending no further than necessary to correct that violation, and (c) narrowly drawn and the least intrusive means to correct the violation. Settlement Agreement 2. The consent decree thus falls "within the range of possible relief" permitted by federal law and pursuant to the PLRA. Agreed Order Granting Approval of Settlement Agreement and Certifying a Settlement Class 2.

The original consent decree consisted of 90 total provisions. The Monitor assigns compliance ratings and recommendations to 71 of these in his quarterly reports ("substantive provisions").[6] *See, e.g.*, Twelfth Monitor's Report 13, 18–68, Mar. 22, 2018, ECF No. 118 (omitting from his report nineteen provisions relating to the Monitor's duties, Plaintiffs' counsel's continued access, court enforcement, and attorneys' fees).

The consent decree contains a three-pronged monitoring and enforcement mechanism to ensure effective assessment of compliance and the availability of Court intervention to address compliance-related issues. **First**, the consent decree contains a broad express enforcement provision empowering the Court to (1) maintain jurisdiction "to ensure that the parties fulfill

[6] The 71 substantive provisions are organized into sixteen subject matter areas: Intake; Staffing and Overcrowding; Cell Confinement; Structured Programming; Individualized Treatment Plans/Treatment Program for Post-Disposition Youth; Disciplinary Practices and Procedures; Use of Restraints; Use of Force; Meals and Nutrition; Clothing; Hygiene and Sanitation; Medical Care; Mental Health Care; Suicide Prevention; Family Support and Interaction; and Miscellaneous Provisions. The nineteen provisions not assessed by the Monitor are organized into four subject matter areas: Independent Monitor; Plaintiffs' Counsel's Continued Access; Compliance, Enforcement, and Dismissal; and Fees.

their respective obligations" under the consent decree, and (2) effectuate compliance through remedial orders. Specifically, the consent decree provides that, "[i]n the event that any matter related to this [consent decree] is brought to the Court, the Court may require briefing, and any remedy within the Court's jurisdiction *shall* be available." Consent Decree 25 (Provision 19.5) (emphasis added). Further, the consent decree expressly provides that, "[i]t is the intent of the parties that the Court will retain ongoing jurisdiction . . . for the purposes of enforcement." *Id*. at 3. **Second**, the consent decree contains extensive right-of-access provisions, empowering Plaintiffs' counsel to monitor consent decree compliance with broad access to "relevant documents and files maintained by Henley-Young relevant to assessing [the County's] compliance." *Id*. at 22–23 (Provision 18.1). **Third**, the consent decree provides for the duties and obligations of the Monitor. These include requiring that the Monitor (a) file quarterly reports; (b) provide Plaintiffs with "all draft reports from other experts"; and (c) allow Plaintiffs' counsel to "be present" at his experts' briefings. *Id.* at 21–22 (regarding Provisions 17.1–17.7, outlining the independent monitor's duties, which the Monitor has inconsistently discharged since 2015).[7]

The Court extended the consent decree for two years and held the County in contempt for

[7] The Monitor's substantial lack of conformance with the independent monitoring requirements of the consent decree has created inefficiencies and hindered Plaintiffs' ability to assess compliance in this case. Plaintiffs respectfully request that the Court require that the Monitor perform the monitoring duties in the consent order, as unilateral modification of those duties is not permitted under the PLRA or the consent decree. *See, e.g.*, 18 U.S.C. 3626(b) (providing that a party or intervenor may seek modification of court-ordered prospective relief under the PLRA); Consent Decree 21 (providing that the parties' mutual consent is required for any modification). The Monitor has not consistently provided Plaintiffs with draft reports from his experts, provided for Plaintiffs' counsel to be present at his experts' briefing, nor filed quarterly reports. Under the consent decree, the independent monitor in this case must "file a report with the Court," "on a quarterly basis," documenting the progress of compliance"; describing the [County's] steps to implement [the consent decree]"; and "evaluat[ing] the extent to which the [County] has complied with each substantive provision of [the consent decree]." Consent Decree 21–22 (regarding Provisions 17.3, 17.6, and 17.7; the latter specifies that the independent monitor's reports "shall be issued quarterly, unless parties agree otherwise"). Plaintiffs' counsel's request for the date of the Monitor's next report was not answered. Ex. 4, E-Mail from Pls. re: Status Conf. of July 25, 2018 & Request for an A.M. Call (July 24, 2018). Plaintiffs' counsel's request to be provided with draft expert reports and to be present for the Monitor's experts' briefings was also unsuccessful.

lack of compliance in 2014. Since then, the consent decree has been extended two more times—in March of 2016 for two years and in March of 2018 for one year only, until March of 2019. Consent Decree; Am. Consent Decree, Mar. 9, 2016, ECF No. 64; Settlement Agreement. In 2016 and 2018, thirteen and eleven provisions were eliminated, respectively, by agreement of the parties for sustained substantial compliance. Consent Decree; Am. Consent Decree.

In September of 2017, the County began housing long-term CTAs at Henley-Young to comply with the consent decree in the Hind County Jail Case. The Monitor, the Plaintiffs, and the County confirmed that these children were equal class members under the consent decree. *See, e.g.*, Ex. 5, Status Conf. Tr. 4, 11, 16. The Monitor advised during the April 2018 status conference that the CTAs could reside in Henley-Young long-term and it would "have to modify [] programs to address" the needs of the long-term residents, and "one of the key components" to modify was education and programming, "because you have to have ways of ensuring that kids have a structured program daily." *Id*. at 37.

Fewer than five months remain until March of 2019, and the County has not achieved substantial compliance with any of the Key Provisions, or others, since the March 2018 extension. Plaintiffs seek a two-year extension due to (a) the County's rate of achieving substantial compliance with only a handful of consent decree provisions per year, and (b) the great difficulty of achieving substantial compliance with the remaining provisions, many of which require development and delivery of programs and services.[8] Plaintiffs also seek a court

[8] Plaintiffs recently served as class counsel in connection with two consent decrees with which Defendants achieved compliance within approximately three to four years; the consent decrees contained substantially similar remedial terms and applied to children under both youth and adult court jurisdiction. *See, e.g., M.T., et al. v. Forrest Cty., Miss.*, 2:11–cv–91–KS–MTP (S.D. Miss. May 25, 2016) (granting Defendant's unopposed motion to dismiss); *DePriest, et al. v. Walnut Grove Correctional Auth., et al.*, 3:10–cv–663–CWR–FKB (S.D. Miss. Sept. 22, 2017) (dismissing case after granting Plaintiffs' motion for $496,859 in enforcement-related attorneys' fees and costs). Plaintiffs' counsel has not in previous matters, and does not in this case, seek to effectuate recommendations which "may go beyond what the

order requiring the County to develop a CAP with input from Plaintiffs to ensure that the resources required to achieve consent decree compliance by March of 2021 are timely identified and prioritized.

Plaintiffs assert that the lack of resources and long-term planning are insurmountable barriers to the County achieving substantial compliance with all provisions in the consent decree. Relief of the type requested is warranted at this time, and ordering it would be an appropriate and necessary exercise of this Court's authority.

ARGUMENT

Plaintiffs are entitled to an extension of the consent decree because the County is not currently in compliance with the Key Provisions, or with the consent decree as a whole, and no evidence suggests they will become so by March 2019. Plaintiffs are entitled to the relief of CAP development because advanced planning and transparency, on the part of the County regarding how, and with what resources, it plan to achieve consent decree compliance is necessary to address ongoing harm to Plaintiffs and prevent indefinite violations of their federal rights. This is especially important because it has been seven years since entry of the original consent decree and four years since this Court held the County in contempt for lack of progress with the consent decree. This Court should grant the relief sought pursuant to the PLRA and the Court's express and inherent powers to fashion remedies to enforce consent judgements.

I. Plaintiffs Are Entitled to an Extension of the Consent Decree.

This Court has the authority to extend the terms of the consent decree under both the plain language of the consent decree and § 3626(b)(3) of the PLRA. Order Granting in Part and Denying in Part Mot. for Contempt 2 n.1, Apr. 25, 2014, ECF No. 50. Consent decrees may be

consent decree requires." Ex. 5, Status Conf. Tr. 35.

extended for two years after the date a court approves prospective relief if the relief ordered meets the requirements of the PLRA. *See, e.g.*, 18 U.S.C. § 3626(b)(1)(A)(i) (providing that a consent decree may extend two years "after the date the court granted or approved the prospective relief"); 18 U.S.C. § 3626(b)(3).[9] Also, the express terms of the consent decree itself provide that it shall not terminate "[i]f the Court makes written findings based on the record that prospective relief remains necessary after one year to correct a current and ongoing violation of federal rights." Consent Decree 2. A contempt finding is not required to extend the consent decree. *See, e.g.*, Order 6 n.2 (providing that Plaintiffs were entitled to seek an extension of the original consent decree "without regard to [a] contempt finding").

A. The Relief Ordered in the Consent Decree Meets the Requirements of the PLRA as Necessary to Correct Ongoing Violations of Federal Rights.

The terms of the consent decree, which Plaintiffs seek to extend, meet the requirements of the PLRA. When the parties jointly adopted each provision of the original consent decree in 2012, and most recently when they jointly moved for the Court to enter the current consent order, the parties and the Court provided that all provisions of the consent decree are (1) are "necessary to correct an ongoing violation" of the "federal right[s]" of detained children, (2) "extend no further than necessary to correct the violation", and (3) are "narrowly drawn" and "the least intrusive means" by which to remedy the violation. Consent Decree 2–3. When approving the original consent decree, the Court held that the relief ordered "falls within the range of possible relief" under the requirements of the PLRA. Agreed Order Granting Approval of Settlement Agreement and Certifying a Settlement Class 1.

[9] 18 U.S.C. § 3626(b)(3) provides that a consent decree shall not terminate "if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and the prospective relief is narrowly drawn and the least intrusive means to correct the violation."

Since that time, subsequent versions of the original consent decree subtracted provisions with which the County had achieved substantial compliance, but no provisions were added. In all, the consent order has been extended three times, in April 2014, March 2016, and March 2018. Joint Mot. to Extend Consent Decree 4, Mar. 28. 2018, ECF No. 119; Joint Mot. to Extend Consent Decree 6, Mar. 9, 2016, ECF No. 62; Order Granting in Part and Denying in Part Mot. for Contempt 6 (ordering an extension of the consent decree to be applied retroactively). In joint motions to extend the consent decree in 2016 and 2018, the parties reaffirmed that "the remaining provisions with which Hinds County is not in continued substantial compliance extend no further than necessary to correct the violations of [] federal rights, and [] the prospective relief is narrowly tailored and is the least intrusive means to correct the violations." Joint Mot. to Extend Consent Decree 4, ECF No. 119; Joint Mot. to Extend Consent Decree 6, ECF No. 62. There is no countervailing evidence that the consent decree Plaintiffs seek to extend does not meet the requirements of the PLRA.

B. A Two-Year Extension of the Consent Decree Is Necessary.

This Court's decision to extend the consent decree by two years in 2014 was based on the Court's conclusion that the County "will not be in substantial compliance within the next 12 months." Order Granting in Part and Denying in Part Mot. for Contempt 3. At this juncture, the same conclusion is warranted. According to the Monitor's most recent report, the County remains out of substantial compliance with 42 of 47 (89%) remaining substantive provisions in the consent decree.[10] Twelfth Monitor's Report 13, Mar. 22, 2018, ECF No. 118 (omitting from his report nineteen provisions relating to the Monitor's duties, Plaintiffs' counsel's access,

[10] The 47 remaining substantive provisions do not include those provisions jointly eliminated by the parties in 2016 and 2018, nor do they include provisions rated at substantial compliance by the Monitor in his past two reports.

enforcement, and attorneys' fees). According to the Monitor, the County, between 2011 and 2018, achieved substantial compliance with only 41% (29 of 71) of all substantive provisions in the original consent decree. *Id*. (providing a summary chart of the compliance ratings assigned to the 71 substantive provisions in each of the Monitor's previous eight reports); Settlement Agreement 2.

To the extent the Monitor's most recent, seven month-old report is outdated,[11] the County has not come into substantial compliance with any consent order provisions since this Court ordered the consent decree extended in March of 2018. The Monitor has retained three outside experts to provide observations and recommendations in specific subject matter fields. Dr. Ngozie Ezike has provided four expert reports on medical care.[12] Dr. Lisa Boesky has provided four expert reports on mental health care.[13] Dr. Carol Cramer Brooks has provided four expert reports on educational programming.[14]

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[11] *See supra* note 7, at 5 (highlighting that the Monitor has only submitted three monitoring reports during a timespan in which ten quarterly monitoring reports were due pursuant to the terms of the consent decree).

[12] Dr. Ezike conducted her most recent site visit on August 15–16, 2018. Henley-Young Juv. Just. Ctr. Detention Division – Health. Serv. Rev. 1, Oct. 26, 2018, ECF No. 127. Dr. Ezike found continued need for improvements and provided recommendations related to intake screening and access to medical care. *Id*. Specifically, Dr. Ezike noted that the Nurse Practitioner is at the facility for approximately four hours weekly. *Id*. at 3. Youth are rarely admitted to Henley-Young when medical staff is on site. *Id*. ("In my chart review, 60% . . . of the youth were admitted between 8p and 8a when there was no medical staff on site.").

[13] Dr. Boesky conducted her most recent site visit on July 10–13, 2018. Mental Health Serv. Rev. 1, Aug. 21, 2018, ECF No. 124–1. In this report, Dr. Boesky assessed compliance with provisions using the "Not Compliant," "Beginning Compliance," "Partial Compliance," and "Substantial Compliance" rubric utilized by the Monitor. *Id*. (Although Dr. Boesky's language is the same as the Monitor's, she does not have the Court's authority to determine the County's compliance with the consent decree.) Dr. Boesky analyzed compliance with Individualized Treatment Plans and Mental Health Care provisions and did not find the County to be in substantial compliance with any of these provisions. *See id*.

[14] Ms. Brooks conducted her fourth review of Henley-Young on August 13–15, 2018. Educ. Program Rev. 2, Sept. 19, 2018, ECF. No. 126. Ms. Brooks indicated that she witnessed limited progress with her previous recommendations. *See generally, id.* (finding improper distribution or funding of teaching staff; lack of appropriate education programs for JCAs who are housed at Henley-Young; inaccuracies in time reported and actual time spent in substantive classroom teaching; extensive inaccuracies and inconsistencies in incident reports; incomplete IEPs for exceptional education students; inconsistencies in

The County, on average, has come into compliance with only a handful of provisions per year, even if counted from this Court's 2014 contempt holding. Moreover, in 2016 and 2018, the parties eliminated by agreement only thirteen and eleven provisions, respectively, for sustained substantial compliance. Consent Decree; Am. Consent Decree. The overwhelming evidence in the record indicates that the County will not be in substantial compliance with all consent decree provisions within twelve months of March of 2019.

This Court's decision to extend the consent decree by two years in 2014 was also based on evidence that "many of the requirements will take substantial time to achieve." Order Granting in Part and Denying in Part Mot. for Contempt 3. There is ample evidence to support that the remaining provisions will take as much or more time to achieve than those that have been satisfied thus far. Many of the provisions that have been satisfied thus far have been prohibitive ones, such as refraining from hogtying children, subjecting them to chemical and electronic restraints, depriving them of mats and blankets, and forbidding firearms in the facility. Consent Decree 12, 13, 15 (listing provisions eliminated by agreement of the parties in March 2016 and March 2018). Provisions that remain require the systematic development of programs and services required to affirmatively prevent harm and to effectuate the facility's constitutionally-relevant rehabilitative purpose.

Plaintiffs also assert that the County has failed to allocate adequate resources to Henley-Young to facilitate consent decree compliance, and that lack of adequate planning is a barrier to compliance. *See, e.g.*, Ex. 1, Letter from Pls. re: *Request to Discuss Plans for Compliance with Second Am. Consent Decree* (Oct. 10, 2018) (containing an unanswered request of the County to

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classroom safety and set up due to facility failures to implement hardware and software properly). Ms. Brooks also found that "the current design and delivery of providing education isn't effective," and recommended that Hinds County explore alternatives to provide adequate educational services. *Id.* at 20.

discuss its future plans regarding Henley-Young); Ex. 2, Letter from Pls. re: *Responding to Judge Jordan's Requests from Status Conf. of July* 25, 2018 (July 27, 2018); Ex. 6, *Why are Youths Charged with Murder & Other Violent Crime Housed at Juv. Ctr. in Jackson?*, (containing County counsel's suggestion that Henley-Young requires additional unallocated resources).

Plaintiffs, during status conferences, have provided the County and this Court with extensive evidence supporting that the remaining affirmative programmatic provisions in the consent decree would require more resources and planning efforts of the County than it has expended since the consent decree was extended in March 2018. *See, e.g.*, Ex. 5, Status Conf. Tr. 5–8, 33–37; Ex. 8, Handout from Pls. re: Requests for Assistance with Compliance (July 25, 2018); Ex. 9, Handout from Pls. re: Attachment 1: Outstanding Facility Policies, Staffing, and Training Issues (July 25, 2018); Ex. 10, Handout from Pls. re: Attachment 2: Cell Confinement and Disciplinary Practices and Procedures (July 25, 2018); Ex. 11, Handout from Pls. re: Attachment 3: Confinement/Mental Health Nexus: A Case Study (July 25, 2018); Ex. 12, Handout from Pls. re: Attachment 4: Confinement/Mental Health Nexus: Additional Examples (July 25, 2018); Ex. 13, Handout from Pls. re: Attachment 5: Need for Records Protocol Letter (July 25, 2018).

The evidence overwhelmingly supports the conclusion that (1) the County will not be in substantial compliance by March 2019; and (2) the remaining consent decree requirements will take substantial time to achieve. *See generally* Order Granting in Part and Denying in Part Mot. for Contempt 3. Therefore, Plaintiffs are entitled to a two-year extension of the consent decree as necessary to address ongoing violations of the federal rights of children confined at Henley-Young who cannot be made to wait indefinitely for the County to plan for and invest in

providing constitutionally adequate conditions.

II. Plaintiffs Are Entitled to a Court Order Requiring that the County Develop a CAP with Input from the Plaintiffs Under This Court's Express and Inherent Powers.

A two-year extension of the consent decree by itself has not been, and will not be, enough to ensure the County's substantial compliance with all provisions of the consent decree, even by March of 2021. The additional affirmative relief requested—of an order requiring development of a CAP with Plaintiffs' input—is well within this Court's discretion to order pursuant to the Court's express enforcement powers contained within the consent decree and its inherent powers to issue remedial relief pursuant to a finding of contempt.

The relief requested is necessary, narrow, and sufficiently tailored to comply with the PLRA.[15] Whether discretionary or remedial in nature, the affirmative relief requested is necessary, narrowly drawn, and sufficiently tailored. Courts in the Fifth Circuit have ordered Defendants to submit CAPs as a form of relief. *Cowan ex rel. Johnson v. Bolivar County Bd. Of Educ.*, 914 F. Supp. 2d 801, 826 (N.D. Miss. 2012) (the Court maintained judicial control over a school district under an order to integrate and ordered the district to submit proposed plans to integrate schools and achieve racial balance among faculty within 45 days); *Corner v. Housing Auth. New Orleans*, No. 06-10751, 2014 WL 3908592, at *5 (E.D. La. Aug. 11, 2014) (ordering parties to meet and confer to submit a development schedule after holding that seven years of non-compliance was too long to "simply think" about complying). The Fifth Circuit also stated

[15] The CAP requested would be a remedial tool to assist in effectively identifying and enlisting resources for an articulable two–year plan of action to achieve substantial compliance with all provisions of the consent decree. The CAP would not be coextensive with or a proxy for consent decree compliance. Satisfaction as to one would not be the legal or factual equivalent of satisfaction with the other. Development of the CAP with Plaintiffs' input would enhance the potential of the County to double its provision compliance rate and close out the consent decree by March of 2021. The County, of course, would be entitled, under the PLRA, to jointly move for termination at any point it believes it has achieved global substantial compliance. 18 U.S.C. § 3626(b)(1)(B).

that "remedies need not match those requested by a party or originally provided by the court's earlier judgment." *U.S. v. Alcoa, Inc.*, 533 F.3d 278, 288 (5th Cir. 2008).

A. Ordering the CAP is Within the Court's Express Enforcement Powers Contained in the Consent Decree.

In order for the Court to order a CAP as within the Court's express enforcement powers, the matter must be "brought to the Court, the Court may require briefing, and any remedy within the court's jurisdiction shall be available." Consent Decree 25 (Provision 19.5). The purpose of the Court's express enforcement power is "to ensure that the parties fulfill their respective obligations" under the consent decree. *Id.*

In this case, Plaintiffs raised the issue of the need for Court intervention to ensure the County's compliance with the consent decree multiple times since the decree was extended in March of 2018. *See, e.g.,* Ex. 5, Status Conf. Tr. 5–8 (requesting the Court "provide concrete ways for the parties to continue progress," particularly in the areas of mental health, medical, and education compliance; also requesting a schedule of status conferences and concrete dates for production of policies); *id.* at 7–8 (requesting to be provided with updated policies); *id.* at 21 (verification from County's counsel that updated policies exist); Ex. 8, Handout from Pls. re: Requests for Assistance with Compliance (July 25, 2018) (requesting the County to update Plaintiffs on requests for policies and procedures, consent decree compliance, and a plan to provide recurring records in a timely manner). All of these "Requests for Assistance" and others have been made directly to the County, and very few have been answered, evidencing the necessity of Court remedial action at this juncture.

The need for development of the County's specific plans to comply have thus been "brought to the Court" many times since March of 2018. Consent Decree 25 (Provision 19.5).

Therefore, pursuant to the Court's express enforcement powers, it "may require briefing, and any remedy within the court's jurisdiction *shall* be available," including Plaintiffs' proposed remedy of a CAP. *Id* (Provision 19.5) (emphasis added). The purpose of the Court's express enforcement power, "to ensure that the parties fulfill the respective obligations" under the consent decree, would be satisfied if this Court ordered the County to develop a CAP with Plaintiffs' input. *Id*.

B. Ordering the CAP is Within the Court's Inherent Enforcement Powers Pursuant to a Finding of Contempt.

The Court's authority to order the CAP is within the Court's inherent power to design remedies aimed at achieving consent decree compliance. To demonstrate contempt, Plaintiffs must establish by "clear and convincing evidence" that: "(1) a court order was in effect, (2) the order required specified conduct by the respondent, and (3) the respondent failed to comply with the court's order." *U.S. v. City of Jackson, Miss.*, 359 F.3d 727, 731 (5th Cir. 2004) (citing *Am. Airlines, Inc. v. Allied Pilots Ass'n.*, 228 F.3d 574, 581 (5th Cir. 2000)) (finding that a district court had the authority under a consent decree to award attorney's fees following the district court's finding of contempt by defendants). Conduct violating provisions of a consent decree is specific conduct establishing the third prong of the contempt analysis. *U.S. v. City of Jackson, Miss.*, 318 F. Supp. 2d 395, 410 (S.D. Miss. 2002).

Plaintiffs are not required to demonstrate that that the County's contempt was willful or in bad faith. *See* Order Granting in Part and Denying in Part Mot. for Contempt 6. Furthermore, the Fifth Circuit "has consistently held that good faith is not a defense to a finding of civil contempt." *City of Jackson, Miss.*, 359 F.3d at 735 n.25; *see also Chao v. Transocean Offshore, Inc.*, 276 F.3d 725, 729 (5th Cir. 2002) ("Good faith is not a defense to civil contempt; the question is whether the alleged contemnor complied with the court's order."); *Whitfield v.*

Pennington, 832 F.2d 909, 913 (5th Cir. 1987) ("Intent is not an issue in civil contempt proceedings; rather, the question is whether the alleged contemnors have complied with the court's order.").

The consent decree does not bind this Court to impose a specific form of relief. The Fifth Circuit has established that, "district courts have wide discretion to enforce decrees and to implement remedies for decree violations." *Alcoa*, 533 F.3d at 286 (interpreting the consent decree at issue's provision "to take any action necessary or appropriate for its enforcement," to mean that the district court could impose the remedies it suggested); *see also Chisolm ex rel. CC v. Greenstein*, 876 F. Supp. 2d 709, 713 (E.D. La. 2012) (citing the Court's holding in *Alcoa* to grant the court wide discretion in consent decree enforcement).

The Fifth Circuit grants district courts "the inherent authority to enforce their judicial orders and decrees in cases of civil contempt" emphasizing that "[d]iscretion . . . . must be left to a court in the enforcement of its decrees." *Cook v. Oschsner Foundation Hosp.*, 559 F.2d 270, 272 (5th Cir. 1977). The Fifth Circuit has also held that "[c]onsent decrees are judgments despite their contractual nature, and district courts may fashion remedies [which] need not match those requested by a party or originally provided by the court's earlier judgment." *Alcoa*, 533 F.3d at 288 (citing *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 577–79 (5th Cir. 2005)) (finding a district court's decision to issue an injunction to prevent Defendant from pursuing a trademark to be "within the court's discretionary power" and a necessary part of its enforcement power). In fashioning remedial relief for violation of a consent decree, the Court should enter relief that is coercive or remedial in nature. *Jackson v. Whitman*, 642 F. Supp. 816, 827 (W.D. La. 1986) (holding that the applicable jurisprudence "is clear that the standard to be employed in deciding whether or not to impose a compliance fine is whether such fine is necessary to coerce

the contemnor into compliance with [the] court's order") (internal quotations omitted).

1. The Consent Decree is a Court Order.

In April 2014, this Court held the "[Settlement] Agreement . . . fully satisfies the definition of a consent decree." Order Granting in Part and Denying in Part Mot. for Contempt 5, 7 (citing, among other sources, the consent decree itself, the plain language of 18 U.S.C. § 3626(g), and *Rowe v. Jones*, 483 F.3d 791, 795–96 (11th Cir. 2007)). Plaintiffs have satisfied this element.

2. The County Engaged in Specific Conduct in Violation of the Consent Decree.

To establish this prong, Plaintiffs must demonstrate specific conduct by the County in violation of the consent decree. Provisions of district court orders must be "clear in what conduct they [have] mandated and prohibited." *Hornbeck Offshore Servs., L.L.C. v. Salazar*, 713 F.3d 787, 793 (5th Cir. 2013) (citing *Am. Airlines, Inc.*, 228 F.3d at 578–79) (reversing the district court's finding of contempt because defendant's actions "did not violate the injunction as drafted and reasonably interpreted"). However, a court "need not anticipate every action to be taken in response to its order, nor spell out in detail the means in which its order must be effectuated." *Id.* at 792.

In this case, the parties negotiated a joint agreement with every provision of the consent decree and re-affirmed the validity of the required remedial provisions in two subsequent joint motions to extend the consent decree. *See generally* Consent Decree 1; Am. Consent Decree 1; Settlement Agreement 1. Additionally the remedial provisions were adjudged upon the Court's initial order, and thereafter upon each extension, as (1) "necessary to correct an ongoing violation" of the "federal right[s]" of detained children; (2) "extend[ing] no further than

necessary to correct the violation"; and (3) "the least intrusive means" by which to remedy the violation. Settlement Agreement 2; *see also* Agreed Order Granting Approval of Settlement Agreement and Certifying a Settlement Class 2 (providing that the relief ordered "falls within the range of possible relief").

The County's failure to comply substantially with the Key Provisions, including Provision 18.1, governing Plaintiffs' access to records, therefore constitutes specific conduct in violation of the consent decree as outlined below and summarized in Exhibit 14. Ex. 14, Summary Chart II: Non-Compliance with Access Provision (compiling outstanding requests for policies, procedures, and records Plaintiffs have sought pursuant to Provision 18.1).

3. The County Has Failed to Comply with the Court's Order.

Individual provisions of consent decrees are "independent obligations, each of which must be satisfied before there can be a finding of substantial compliance" with the entire consent decree. *Rouser v. White*, 825 F.3d 1076, 1081 (9th Cir. 2016) (finding that the district court wrongly terminated a consent decree because the district court did not consider defendants' lack of compliance with individual provisions of the consent decree).

"'[T]he mere fact that a party may have taken steps toward achieving compliance is not a defense to a contempt charge.'" *City of Jackson, Miss.*, 318 F. Supp. 2d at 417 (citing *Sizzler Family Steakhouses v. Western Sizzlin Steak House, Inc.*, 793 F.2d 1529, 1534 n. 5, *reh. denied*, 797 F.2d 982 (11th Cir. 1986)). A finding of substantial compliance requires more than "significant steps." *Rouser*, 825 F.3d at 1082. The "obligations contained in the Consent Decree are binding and enforceable, and Defendants may not choose to disregard them after unilaterally determining that a provision is unnecessary or undesirable." *Frew v. Hawkins*, 401 F.Supp.2d 619, 654 (E.D. Tex. 2005).

In determining whether a party has failed to comply with a Court order so as to render it in contempt, Courts may consider whether defendants "fail[ed] to accomplish what was ordered in meaningful respects," including the scope of violations, the level of effort made to comply with the order, and the time taken to attempt to follow the order. *Ruiz v. McCotter*, 661 F. Supp. 112, 143, 144, 145, 117 (S.D. Tex. 1986) (finding Defendant in contempt for violating various provisions because attempting to comply with a provision over a span of two years demonstrated lack of diligence; finding Defendant "procrastinated in obeying a court order requiring immediate action"; taking Defendant's "tardy response to the improper housing of prisoners… coupled with its failure to address the female housing problem," as sufficient proof of "a failure to achieve substantial compliance with the relevant orders;" and determining that repetition of violations indicate a lack of diligence" despite Defendant's promulgation of plan, which the Court found "lamentably defective").

Courts additionally rely on state law definitions of substantial compliance as an analogy. *Rouser*, 825 F.3d at 1082. Mississippi state courts determine whether a party is in "substantial compliance" as a "legal, though fact-sensitive, question [that] is, therefore, necessarily decided on an *ad hoc* basis." *Carr v. Town of Shubuta*, 733 So.2d 261, 265 (Miss. 1999) (interpreting the "substantial compliance" provisions of the Mississippi Tort Claims Act).

The Fifth Circuit has also held that lack of compliance occurs at the first instance of denial, and that "an indeterminate delay has the same effect as an outright denial." *See Groome Resources Ltd., L.L.C. v. Parish of Jefferson*, 234 F.3d 192, 199 (5th Cir. 2000) (holding that a Fair Housing Act violation occurs when an individual is first denied accommodation).

While the County has failed to achieve substantial compliance with the vast majority of consent decree provisions, Plaintiffs outline the Court's power to grant the CAP relief via its

contempt powers by demonstrating the County's lack of substantial compliance with the Key Provisions. The violations outlined below have continued for years despite repeated recommendations from the Monitor and his experts to implement ignored recommendations. If established, such a finding would entitle Plaintiffs to a finding of contempt and the coercive CAP remedy requested.

i. The County Has Failed to Comply with Court Orders Regarding Plaintiffs' Access to Records and Documents (Provision 18.1).

The consent decree contains extensive right-of-access provisions, empowering Plaintiffs' counsel to monitor consent decree compliance with broad access to "relevant documents and files maintained by Henley-Young relevant to assessing [the County's] compliance." Consent Decree 22–23 (Provision 18.1). The Plaintiffs have unsuccessfully requested, at least fourteen times, revised and updated policies they are entitled to receive under this provision, which are critical to monitoring consent decree compliance. Ex. 14, Summary Chart II: Non-Compliance with Access Provision; *see also* Ex. 2, Letter from Pls. re: *Responding to Judge Jordan's Requests from Status Conf. of July* 25, 2018 (July 27, 2018); Ex. 15, E-Mail from Pls. re: *Request for Records: Current Policies, Forms, and Staffing* (Apr. 20, 2018); Ex. 16, E-Mail from Pls. re: Reforwarding Request for Records: Current Policies, Forms and Staffing (Apr. 23, 2018); Ex. 17, Letter from Pls. re: *Records: Revised Weekly Request & Outstanding Requests* (July 17, 2018); Ex. 18, E-Mail from Def. re: *Responding to Judge Jordan's Requests from Status Conf. of July* 25, 2018 (July 27, 2018); Ex. 19, E-Mail from Pls. re: *Pls.' Counsel's Attempts to Copy Policies and Resident Files* (Sept. 18, 2018). Plaintiffs also requested these revised and updated policies at the April and July 2018 status conferences. *See, e.g.,* Ex. 5, Status Conf. Tr. 8; Ex. 8, Handout from Pls. re: Requests for Assistance with Compliance (July 25, 2018).

Plaintiffs were provided on October 31, 2017 with a current set of the facility's policies and procedures. Ex. 20, E-Mail from Henley-Young re: Policies and Procedure Manual (Sept. 18, 2018). The Monitor conducted a monitoring visit two months later, in December 2017, and in his follow-up report made recommendations for 57 substantive additions or revisions to the facility's policies and procedures. Ex. 9, Handout from Pls. re: Attachment 1: Outstanding Facility Policies, Staffing, and Training Issues (July 25, 2018); Twelfth Monitor's Report, Mar. 22, 2018, ECF No. 118. During the April 2018 status conference, the County acknowledged updated and/or revised policies existed that Plaintiffs had not been given. Ex. 5 Status Conf. Tr. 21. At the Court's request the Monitor submitted a document listing policies under development, which covered a fraction of the recommendations made in his most recent monitoring report. Ex. 30, E-Mail from Leonard Dixon re: Revised Mental Health Policies as Requested at Apr. 25 Status Conf. (May 1, 2018); Ex. 9, Handout from Pls. re: Attachment 1: Outstanding Facility Policies, Staffing, and Training Issues (July 25, 2018); *see also* Twelfth Monitor's Report, Mar. 22, 2018, ECF No. 118.

On April 24, 2018, Henley-Young advised that they had identified two policies that had been either revised or created after October 2017. Ex. 31, E-Mail from Henley-Young re: Policies Created or Revised after Oct. 2017 (Apr. 24, 2018). In May of 2018, the Monitor submitted a report referencing new and updated policies. Ex. 30, E-Mail from Leonard Dixon re: Revised Mental Health Policies as Requested at Apr. 25 Status Conf. (May 1, 2018).

Before and at the July 2018 status conference, Plaintiffs requested the policies again, re-requested outstanding records, and requested a weekly production of records produced in the regular course of business to prevent further delays in responding to requests under Provision 18.1. Ex. 17, E-Mail from Pls. re: Reforwarding Request for Records: Current Policies, Forms

and Staffing (Apr. 23, 2018); Ex. 8, Handout from Pls. re: Requests for Assistance with Compliance (July 25, 2018); Ex. 13, Handout from Pls. re: Attachment 5: Need for Records Protocol Letter (July 25, 2018). During the July 2018 status conference, the Court ordered the parties to confer and resolve. In response, Plaintiffs wrote the County a letter requesting to confer and resolve pursuant to the Court's order. Ex. 2, Letter from Pls. re: *Responding to Judge Jordan's Requests from Status Conf. of July* 25, 2018 (July 27, 2018). To date, the County has still not complied with this Court's order from the July 2018 status conference to confer and resolve outstanding policy and records requests with Plaintiffs. Ex. 18, E-Mail from Def. re: *Responding to Judge Jordan's Requests from Status Conf. of July* 25, 2018 (July 27, 2018) (indicating the County received the letter but providing no response).

On August 6, 2018, Plaintiffs visited the facility and offered to scan the policies and procedures on site, along with class members' files. *See*, *e.g.*, Ex. 19, E-Mail from Pls. re: *Pls.' Counsel's Attempts to Copy Policies and Resident Files* (Sept. 18, 2018) (listing the Aug. 6, 2018, request to Henley-Young). While able to scan class members' files, Plaintiffs were told the County did not have any updated policies and procedures in their custody. *See generally id*.

In September of 2018, Plaintiffs, for the fourteenth time, requested updates to the October 2017 policies.[16] *See* Ex. 19, E-Mail from Pls. re: *Pls.' Counsel's Attempts to Copy Policies and Resident Files* (Sept. 18, 2018); Ex. 14. Summary Chart II: Non-Compliance with Access

[16] In August of 2018, the Monitor submitted to the Court a table of contents for policies and procedures provided to parties in October of 2017 and a table of contents for a manual provided by the County's third-party medical care provider. Letter from Leonard Dixon, Fed. Ct. Monitor re: Dr. Boesky's Mental Health Policy and Procedures Evaluation and Table of Contents for October 2017 Policies and Procedures, to Court, Aug. 21, 2018, ECF No. 124-4 (indicating that updated policies or procedures exist, but not providing them); *see also* Juvenile Policy and Procedure Manual (Quality Correctional Healthcare), Aug. 21, 2018, ECF No. 124-2 (containing a handwritten note indicating an August of 2018 update, but not providing policies or procedures); Table of Contents ("Policies or Procedures Provided to Parties in Oct. 2017"), Aug. 21, 2018, ECF No. 124-3 (denoting policies or procedures under review with an asterisk, but not providing them).

Provision. In response, Henley-Young re-forwarded a screen shot of their October 31, 2017, e-mail to Plaintiffs in which they provided the October 2017 policies. Ex. 20, E-Mail from Henley-Young re: Policies and Procedure Manual (Sept. 18, 2018).

Plaintiffs' requests for other monitoring-critical records to which they are entitled under Provision 18.1 have likewise not been answered despite multiple requests. *See, e.g.*, Ex. 14, Summary Chart II: Non-Compliance with Access Provision; *see also* Ex. 2, Letter from Pls. re: *Responding to Judge Jordan's Requests from Status Conf. of July* 25, 2018 (July 27, 2018); Ex. 15, E-Mail from Pls. re: *Request for Records: Current Policies, Forms, and Staffing* (Apr. 20, 2018); Ex. 16, E-Mail from Pls. re: Reforwarding Request for Records: Current Policies, Forms and Staffing (Apr. 23, 2018); Ex. 17, Letter from Pls. re: *Records: Revised Weekly Request & Outstanding Requests* (July 17, 2018); Ex. 21, E-mail and Letter from Pls. re: Requesting Records Pertaining to May 12, 2018 Incident (May 14, 2018); Ex. 22, E-mail from Pls. re: *Request for Confirmation of Compliance with Consent Decree and Release from Lockdown* (May 15, 2018); Ex. 23, E-mail from Pls. re: Forwarding *Request for Confirmation of Compliance with Consent Decree and Release from Lockdown* (May 15, 2018); Ex. 24, Letter from Pls. re: *Need for Psychiatric Care and Provision of Psychotropic Medications* (July 12, 2018); Ex. 25, Letter from Pls. re: *Investigating Inadequate Provision of Mental Health Care to Youth* (Sept. 26, 2018). To remedy chronic non-compliance with Provision 18.1, Plaintiffs request a court order that the County comply with the records compliance approach Plaintiffs outlined in their July 27, 2018, letter to the County responding to this Court's direction that the parties meet and confer to resolve the access issues, which were at the heart of the original litigation in this case. Ex. 2, Letter from Pls. re: *Responding to Judge Jordan's Requests from Status Conf. of July* 25, 2018 (July 27, 2018); Am. Compl., ECF No. 6. Specifically, we request the following:

1. The County provide Plaintiffs' counsel with documents, records, and files requested pursuant to Provision 18.1 within five business days.
2. The County provide Plaintiffs' counsel by email on a weekly basis the following documents created in the regular course of business:
   a. Mental health records produced as a follow-up to incident reports.
   b. Confinement records for any type of confinement (including for events at school).
   c. Staff disciplinary records produced as a follow-up to incident reports.
   c. Files created during intake for new admits.
   d. Programming schedule for weekdays, weekends, and any variable schedule for CTAs.
   e. The psychiatrists' actual work hours (if no record is kept, then their schedule).
   f. QMHP staff members' actual work hours (if no record is kept, then their schedule).
   g. Medical staff members' actual work hours (if no record is kept, then their schedule).
   h. Any document(s) kept in the regular course indicating staff positions filled and vacant.
   i. Current roster.
   j. Current list of policies and procedures.

ii. The County Has Ignored Repeated Recommendations Regarding the Need to Alter and Expand Facility Space to Comply with the Consent Decree.

The Monitor, his experts, and the Hinds County Jail Case Monitor have identified the lack of facility space as a barrier to compliance. For a more complete compilation of relevant findings and recommendations, see Exhibit 3. Ex. 3, Summary Chart III: Monitor and Expert Findings and Recommendations re: Facility Space. Regarding the need to achieve general consent decree compliance, the Monitor has repeatedly advised that the County must "[r]enovate and redesign" the facility, and that "[b]ased on [his] review the county has made no in roads or provided any support for changes in this area." Twelfth Monitor's Report 10, Mar. 22, 2018, ECF No. 118. In March of 2018 there were fewer CTAs at the facility than there are now; CTAs currently comprise 50–75% of the facility's census. Even in March 2018, the Monitor advised, "I still continue to recommend the County proceed with the proposed renovations and additions to the existing juvenile facility." *Id*. at 69; Eleventh Monitor's Report 11, Sept. 25, 2017, ECF No. 113 (reviewing "plans for a redesign of the existing Henley[-]Young complex building").

The Monitor's education expert advises that existing facility space is "definitely inadequate," and that she has "continue[d] to stress this point especially as it relates to the social studies classroom and the EES rooms." Educ. Prog. Rev. 18, Sept. 19, 2018, ECF No. 126. The Monitor's mental health expert has advised for the "immediate" need to "[c]reate at least one 'suicide-resistant' room/cell on each unit." Mental Health Serv. Rev. 19–20, Aug 21, 2018, ECF No. 124-1. She has also noted the lack of space for individual and group treatment, going so far as to suggesting use of "outside spaces" for individual and psychoeducational group treatment to guarantee confidentiality. *Id*. at 13. The Monitor's medical expert has also advised on the need for appropriate allocation of space. Henley-Young Juv. Just. Ctr. Detention Division – Med. Serv. Rev. 12, Mar. 19, 2018, ECF No. 117 (directing that "[a] designated area separate from the general population is needed to maintain youth that are recovering from acute illness and/or are actively contagious").

In her December 2017 report, the Hinds County Jail Monitor advised with regards to the transfer of CTAs to Henley-Young that compliance was "dependent" on "creation of additional program space(s)." Ex. 26, Court-Appointed Monitor's Third Monitoring Rep. at 55, *U.S. v. Hinds Cty., et al.*, No. 3:16-cv-489-WHB-JCG (Dec. 11, 2017). Specifically, the Hinds County Jail Monitor provided that "[c]onstructing . . . additional classroom, multi-purpose, and recreational programming space(s) . . . will permit proper programming, classification, and supervision for all youth at Henley[-]Young," and that "proper planning (including needed funding) for/implementation of these changes should be done as soon as possible." *Id*. at 50–51, 55.

In her April 2018 report, the Hinds County Jail Monitor noted that the County had not "address[ed] previous recommendations," including making security-related plant modifications

and "constructing additional classroom, multi-purpose, and recreational programming space(s) that will permit proper programming, classification, and supervision for all youth at Henley-Young." Ex. 27, Court-Appointed Monitor's Fourth Monitoring Rep. at 48–49, *U.S. v. Hinds Cty., et al.*, No. 3:16-cv-489-WHB-JCG (Apr. 18, 2018). In her August 2018 report, the Hinds County Jail Monitor noted, "most of these recommendations were not implemented" and other projected problems had also arisen. Ex. 28, Court-Appointed Monitor's Fifth Monitoring Rep. at 54, *U.S. v. Hinds Cty., et al.*, No. 3:16-cv-489-WHB-JCG (Aug. 1, 2018). At the most recent status conference for the Hinds County Jail Case, the Hinds County Jail Monitor provided priority recommendations to the County. The County was advised to "as soon as possible" make physical plant modifications to Henley-Young, including to "follow [through] with stated plan to add temporary/portable classroom/program space," and to "[m]ake modifications to . . . living units." Ex. 29, Handout from Elizabeth Simpson re: Priority Recommendations from June 2018 at 5.(Aug. 29, 2018).

iii. The County Has Failed to Comply with Key Provisions of the Consent Decree.

The list below contains highlights of findings and recommendations by the Monitor and his expert which support that the County is not in substantial compliance with the Key Provisions. For a more complete compilation of relevant findings and recommendations, see Exhibit 7. Ex. 7, Summary Chart I: Monitor and Expert Findings re: 13 Key Provisions.

1. ***Provision 3.1 (Structured Programming):*** The County should develop and implement an appropriate education program for all youth, including for JCAs. Educ. Prog. Rev. 12, Sept. 19, 2018, ECF No. 126. In his past three reports, the Monitor has repeated substantive recommendations to the County, including to create and update policies and

procedures, to create adequate schedules, develop positive behavior management systems, and hire additional recreation staff. Twelfth Monitor's Report 25, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 30, Sept. 25, 2017, ECF No. 113; Tenth Monitor's Report 31, Feb. 27, 2017, ECF No. 112.

2. ***Provision 4.1 (Structured Programming):*** The Monitor advised that compliance requires programming that includes the JCA population. Twelfth Monitor's Report 29–30, Mar. 22, 2018, ECF No. 118. In his last three monitoring reports, the Monitor has recommended that the County hire case management staff in order to comply with this Provision. *Id*. at 30; Eleventh Monitor's Report 34, Sept. 25, 2017, ECF No. 113; Tenth Monitor's Report 34–35, Feb. 27, 2017, ECF No. 112.

3. ***Provision 5.1 (Individualized Treatment Plans):*** The County has not implemented the Monitor's recommendation in his last two reports that the County review "light weight residents" and "find alternative placement for them." Twelfth Monitor's Report 31, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 34, Sept. 25, 2017, ECF No. 113. The County should also "communicate with Hinds Behavioral Health and Marion Counseling" to determine whether additional assistance or referrals are required. Mental Health Serv. Rev. 5, Aug. 21, 2018, ECF No. 124-1.

4. ***Provision 5.2 (Individualized Treatment Plans):*** The Monitor's mental health expert advised that the clinical psychologist's hours be increased to full-time and found "[n]o treatment plans have yet been developed for youth to address Mental Health or Substance Use treatment at the Detention Center." Mental Health Serv. Rev. 6, Aug. 21, 2018, ECF No. 124-1.

5. ***Provision 5.3 (Individualized Treatment Plans):*** The Monitor's mental health expert reported no signs of compliance other than the existence of a policy. *Id.* at 7. In his last three reports, the Monitor recommended that the County provide intensive training to all staff members. Twelfth Monitor's Report 33, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 36–37, Sept. 25, 2017, ECF No. 113; Tenth Monitor's Report 38, Feb. 27, 2017, ECF No. 112.

6. ***Provision 5.4 (Individualized Treatment Plans):*** The Monitor's mental health expert reported that no individualized treatment plans currently exist, so there are no plans to review under Provision 5.4, regarding "Multi-Disciplinary Treatment Team[s] (MTT)" meant to "discuss residents' Individualized Treatment Plan[s], including treatment goals and objective[s], and to assess youths' progress." Mental Health Serv. Rev. 6, 8–9, Aug. 21, 2018, ECF No. 124-1.

7. ***Provision 12.1 (Medical Care):*** The Monitor and his medical expert recommend that, medical staff remain on duty at all times and that physical exams be performed on all youth within 72 hours. Henley-Young Juv. Just. Ctr. Detention Division – Health. Serv. Rev. 5, Oct. 26, 2018, ECF No. 127; Twelfth Monitor's Report 53, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 55, Sept. 25, 2017, ECF No. 113. According to the Monitor's medical expert, "only cursory physical exams are performed by the nurses which can result in missed health diagnoses" and the Nurse Practitioner does not perform a physical on all admitted youth. Henley-Young Juv. Just. Ctr. Detention Division – Health Serv. Rev. 4–5, ECF No. 127. The Monitor recommended increased training on medication administration, and that licensed professionals review and supervise the

nurses at the facility. Twelfth Monitor's Report 53, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 55, Sept. 25, 2017, ECF No. 113.

8. ***Provision 12.2 (Medical Care):*** The Monitor and his medical expert in multiple recent reports have repeated the recommendation that the County hire a qualified medical professional for nights, including on the weekend. Twelfth Monitor's Report 54, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 56, Sept. 25, 2017, ECF No. 113; Tenth Monitor's Report 57, Feb. 27, 2017, ECF No. 112; Henley-Young Juv. Just. Ctr. Detention Division – Health Serv. Rev. 3, 5, Oct. 26, 2018, ECF No. 127 (reporting that "60% of youth were admitted between 8 PM and 8 AM when there was no medical staff on site; "only registered nurses work at the facility and their hours have decreased from 8 AM – 12 AM to 8 AM – 8 PM"; and a Nurse Practitioner is at the facility "about 4 hours weekly and only sees patients referred to her by the nurses"). The expert advises that overall nursing coverage hours be expanded rather than limited. Henley-Young Juv. Just. Ctr. Detention Division – Health. Serv. Rev. 4, Oct. 26, 2018, ECF No. 127.

9. ***Provision 13.4 (Mental Health Care):*** The Monitor's mental health expert found that policies and procedures have been developed and implemented regarding referral services and processes, but there is no additional information regarding the extent of implementation and the County must "ensure all youth that need to be referred to the Psychiatrist for issues related to psychotropic medication are being referred in a timely manner." Mental Health Serv. Rev. 15, Aug. 21, 2018, ECF No. 124-1.

10. ***Provision 13.5 (Mental Health Care):*** The psychiatrist is at Henley-Young for less than two hours per week, which is insufficient, and he is unaware that there is a consent decree in place at the facility. Health Serv. Rev. 9, Oct. 26, 2018, ECF No. 127. The psychiatrist

does not have specialized training in children or adolescents. Mental Health Serv. Rev. 16, Aug. 21, 2018, ECF No. 124-1. The psychiatrist does not communicate or collaborate with other staff, including mental health professionals, at the facility, and he is not participating in the weekly Multi-Disciplinary Treatment Team meetings. Health Serv. Rev. 9, Oct. 24, 2018, ECF No. 127.

11. ***Provision 13.6 (Mental Health Care):*** The Monitor's medical experts found "a lack of coordination between the psychiatrist and counselors at the facility," and that the "contracted psychiatrist and behavioral therapist have little to no contact with the facility behavioral team workers." *Id*. The Monitor has made repeated recommendations, including: (1) development of policies and procedures, (2) training, (3) for the facility to obtain documentation from a mental health organization on a plan of action for residents receiving mental health services, and (4) for the facility to hire case management staff. Twelfth Monitor's Report 60, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 61–62, Sept. 25, 2017, ECF No. 113; Tenth Monitor's Report 62, Feb. 27, 2017, ECF No. 112.

12. ***Provision 14.4 (Suicide Prevention):*** The Monitor's mental health expert found no "suicide-resistant rooms" on any living unit and advised that these rooms be built immediately. Mental Health Serv. Rev. 19–20, Aug. 21, 2018, ECF No. 124-1, The Monitor recommended that the suicide prevention policy be included in the overall mental health program, and that mental health professionals assist in the development of these policies. Twelfth Monitor's Report 62, Mar. 22, 2018, ECF No. 118; Eleventh Monitor's Report 64, Sept. 25, 2017, ECF No. 113.

ATTORNEYS' FEES AND COSTS

At this time, Plaintiffs seek attorneys' fees and costs necessary to compensate it for non-compliance with the records access provision of the consent decree (Provision 18.1), as diligent attempts to obtain basic monitoring-critical documents, such as policies, programming schedules, and records of clinicians' qualifications has been excessively burdensome. Attorneys have the authority to seek fees under 42 U.S.C. § 1983 and 42 U.S.C. § 1988(b), as well as under local precedent. The plain language of a consent decree also guides a Court in deciding whether or not to award attorneys' fees to a prevailing party. *U.S. v. City of Jackson*, 359 F.3d at 732 (awarding attorneys' fees to plaintiffs due to the consent decree's explicit remedial provision empowering the court to "impose *any remedy authorized by law or equity, including* but not limited to an order … awarding any damages, *costs and/or attorneys' fees*) (emphasis in the original). Fees must be "directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988. . . ." 42 U.S.C. § 1997e(d)(1)(A). The fees must also be "directly and reasonably incurred in enforcing the relief ordered for the violation." *Id*. at (d)(1)(B)(ii). Additionally, this Court has the discretion to award attorneys' fees in order to enforce its own decrees. *Oschsner Foundation Hosp.*, 559 F.2d at 272 (holding that granting attorneys' fees in civil contempt hearings is reasonable to enforce compliance with a court order or to compensate for losses or damages incurred due to non-compliance).

Should the Court determine an award of attorneys' fees and costs are an appropriate remedy, Plaintiffs will submit a motion for fees and affidavits forthwith, including after any hearing on this motion. This Court ordered at the close of the 2014 contempt proceedings that, if "the County fails to make adequate progress, then Plaintiffs may file a properly supported

motion seeking their attorneys' fees associated with efforts to enforce the Agreement." Order Granting in Part and Denying in Part Mot. for Contempt at 7.

CONCLUSION

The weight of evidence supports that this Court can and should grant Plaintiffs' request for (1) a two-year extension of the consent decree; (2) an order requiring compliance with Provision 18.1; and (3) an order requiring the necessary, narrow, and tailored affirmative relief of CAP development, with Plaintiffs' input, pursuant to (a) the Court's express enforcement powers contained within the consent decree; and/or (b) the Court's inherent power to order coercive remedies to effectuate a consent judgement pursuant to a finding of contempt.

Respectfully submitted, this the November 14, 2018.

By: /s/ Paloma Wu

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CERTIFICATE OF SERVICE

I, Paloma Wu, hereby certify that a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by electronic mail to all parties by the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

SO CERTIFIED, this 14th day of November, 2018.

/s/ Paloma Wu
Paloma Wu (Miss. Bar No. 105464)