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

ASHOOR RASHO, et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 07-1298**
	)	
ROGER E. WALKER, *et al*.,	)	
	)	
Defendants.	)	

PERMANENT INJUNCTION ORDER

This Permanent Injunction Order is intended to memorialize this Court's Orders dated October 30, 2018, December 20, 2018, and February 26, 2019, into a single document stating the reasons for the injunction, the terms of the injunction, and the acts the Defendants must perform as required under Rule 65 of the Federal Rules of Civil Procedure.

OVERVIEW OF THE ACTION

This case is a class action brought under 42 U.S.C § 1983 alleging violations of the Eighth Amendment of the United States Constitution, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq*., and the Rehabilitation Act, 29 U.S.C. § 794. (ECF No. 711-1 at 1). Plaintiffs challenge the adequacy of the delivery of mental health services to mentally ill prisoners in the physical custody and control of the Illinois Department of Corrections ("IDOC" or "Department"). *Id*.

On August 14, 2015, this Court certified a class in this case for purposes of litigation, and pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, as follows:

> Persons now or in the future in the custody of the Illinois Department of Corrections ("IDOC") [who] are identified or should have been identified by the IDOC's mental health professionals as in need of mental health treatment as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders of the

34 American Psychiatric Association. A diagnosis of alcoholism or drug addiction,
35 developmental disorder, or any form of sexual disorder shall not, by itself, render
36 an individual mentally ill for the purpose of this class definition.
37
38 (ECF No. 252 at 7). As of June 21, 2018, there were approximately 40,237 inmates in the custody
39 of the IDOC, of whom more than 12,228 are believed to be mentally ill. (ECF No. 2286 at 2; *see*
40 *also* ECF No. 1758 at 50, testimony of Defendant Dr. Melvin Hinton ("Dr. Hinton")).
41 Approximately 5,112 of these inmates are considered "seriously mentally ill ("SMI")." (*Id.*; ECF
42 No. 1758 at 51, testimony of Dr. Hinton; *see also* ECF No. 1966-1 at 2, Plaintiffs place the number
43 at 4,843). As of June 30, 2018, 9,576 of the inmates were on the IDOC psychiatric caseload. (ECF
44 No. 2286 at 2). As of July 2018, 913 inmates on the IDOC mental health caseload were housed in
45 segregation. *Id.* Ashoor Rasho, Patrice Daniels, Gerrodo Forrest, Keith Walker, Otis Arrington,
46 Donald Collins, Joseph Herman, Henry Hersman, Rasheed McGee, Fredricka Lyles, Clara Plair,
47 Desiree Hollis, and Crystal Stoneburner serve as the class representatives.

48 The Defendants are John Baldwin, the Acting Director of the IDOC, and Dr. Hinton, the
49 Department's Chief of Mental Health Services and Addiction Recovery Services.

50 On December 17, 2015, the Parties announced they had entered into a comprehensive
51 settlement agreement resolving the action set forth in the Plaintiffs' Third Amended Complaint,
52 the operative complaint in this matter. (*See* Minute Entry dated 12/17/2015; ECF No. 711-1; and
53 ECF No. 260). Notice of the Settlement was given to the class members and a fairness hearing
54 was held on May 13, 2016. (ECF No. 289; Minute Entry dated 5/13/2016). During the hearing,
55 the Court found the agreement to be fair and reasonable, over the voluminous objections that were
56 filed by various inmates[1]. *Id.* The executed Settlement Agreement can be found in this docket,
57 and is referred to herein as the "Settlement Agreement." (ECF No. 711-1). The instant Motion is

[1] All objections have been filed in this docket.

58 brought alleging violations of the Settlement Agreement and the Constitution. The procedural
59 history is sufficiently captured in this Court's Order dated May 25, 2018, and will not be recited,
60 provided however, the Court will detail the additional history occurring after the entry of its
61 Preliminary Injunction Order. (ECF No. 2070 at 2-11).

62 On June 6, 2018, Plaintiffs filed their Motion for Permanent Injunction requesting that the
63 Court hold a hearing on the merits of Plaintiffs' claims, and upon making the necessary merits
64 determination, enter an order converting the Court's Preliminary Injunction Order to a permanent
65 injunction. (ECF No. 2112).

66 On June 8, 2018, Dr. Pablo Stewart's Second Annual Report was docketed. (ECF No.
67 2122). In his Report, Dr. Stewart provides that "the Department is noncompliant with 18 of 25
68 [Settlement Agreement terms] and substantially compliant in only 3 [terms] (orientations, housing
69 assignments and training) [and] [a]s is explained more fully in the body of the report, these
70 noncompliance ratings are primarily due to inadequate staffing." (ECF No. 2122 at 9). It should
71 also be noted that Dr. Stewart presented the Court with a Monitor Chart Review Report during the
72 permanent injunction hearing. (Pl. Ex. 53). In the report, Dr. Stewart provided his assessment of
73 the IDOC's compliance with the Court's Preliminary Injunction Order. His assessment included
74 a review of mental health charts at several institutions. The general methodology used was to
75 assign a rating of "1, 2, or 3," with 1 being non-compliance, 2 being partial compliance, and 3
76 indicating compliance. During his testimony, however, certain information regarding the
77 methodology was revealed that gave this Court pause in considering the data. Most notably, it
78 was revealed that one of the assistant monitors collecting the data used a different methodology in
79 her rating. Given that, the Court cannot give significant weight to the Monitor's findings in that
80 regard.

81 On July 20, 2018, Plaintiffs filed their Motion for Order requesting that the Court enter an
82 order enforcing their right to the fees previously awarded, but deferred, pursuant to the Settlement
83 Agreement. (ECF No. 2233). On August 3, 2018, Defendants filed their Opposition to the Motion
84 for Order. (ECF No. 2276). The Defendants argued, among other things, the Court had not made,
85 by entry of the Preliminary Injunction Order, a finding of an actual violation of the Plaintiffs'
86 federal rights. (ECF No. 2276 at 2).

87 Between August 27, 2018, and September 7, 2018, testimony and evidence were taken and
88 arguments were made in support of the Parties' respective positions on the Motion for Permanent
89 Injunction. The Parties were given the opportunity to submit post-hearing briefs in support of their
90 positions. (ECF Nos. 2405, 2406, and 2407).

91 On October 30, 2018, this Court entered its first Order addressing the Plaintiffs' request
92 for permanent injunction. (ECF No. 2460). In the Order, the Court granted the Plaintiffs' Motion
93 finding that permanent injunctive relief was necessary to address the constitutional deficiencies in
94 the Defendants' care and treatment of mentally ill inmates. (ECF No. 2460 at 1). The Court
95 provide the Parties with an opportunity to brief the proposed remedy.

96 On December 20, 2018, after presented with briefs and argument, the Court entered an
97 Order providing for specific injunctive relief that was narrowly drawn, extends no further than
98 necessary to correct the violation of the Federal right, and is the least intrusive means necessary to
99 correct the violation of the Federal right. (ECF No. 2516).

100 On February 26, 2019, the Court, among other things, modified its Order dated December
101 20, 2018, after considering the Defendants' Motion for Reconsideration or Modification of
102 Injunction Orders. (ECF No. 2579). The Defendants appealed the Court's Orders. (ECF No.
103 2583).

On March 7, 2019, Plaintiffs filed a Motion for Relief from Court Orders to Conform Injunctive Relief Order to Rule 65. (ECF No. 2592). In their Motion, Plaintiffs informed the Court that it made two inadvertent omissions or mistakes in its injunctive relief Orders. The Plaintiffs specifically noted that the Court failed to revise the permanent injunction Order to incorporate the modifications it made to the Order during the February 19, 2019, hearing and memorialized in the Order dated February 26, 2019. (ECF No. 2579; see also Minute Entry dated 2/19/2019). The Plaintiffs also state that the Court's Order should have included the specific staffing requirements of the Defendants' 2014 Remedial Staffing Plan instead of referencing the document in its Order. This Court agreed and entered an indicative ruling requesting that the Seventh Circuit Court of Appeals remand the case for purposes of modifying the preliminary injunction Order(s) to conform to the requirements of Rule 65 of the Federal Rules of Civil Procedure.

On April 15, 2019, the United States Court of Appeals for the Seventh Circuit remanded the matter back to this Court for the limited purpose of permitting the district court to modify the preliminary injunction Order to conform to the requirements of Rule 65 of the Federal Rule of Civil Procedure. (ECF No. 2628).

This Order follows.

SUMMARY OF DECISION

Under the Eighth Amendment, inmates suffering from serious mental illnesses are entitled to adequate medical care. To establish a constitutional violation, Plaintiffs must prove that Defendants have been deliberately indifferent to their serious medical needs, specifically in this case their mental health needs. "[D]eliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (citations omitted). Having fully considered the

127 evidence and testimony presented during the preliminary and permanent injunction hearings, the
128 Court finds that Defendants have been deliberately indifferent to Plaintiff's medical needs in
129 medication management, mental health treatment in segregation, mental health treatment on crisis
130 watch, mental health evaluations, and mental health treatment plans within the meaning of the
131 Eighth Amendment. In this case, the overwhelming evidence establishes that at the time of the
132 preliminary injunction hearing, the Defendants were deliberately indifferent to the Plaintiffs'
133 medical needs. Most notably, the evidence showed that there were systemic and gross deficiencies
134 in staffing that effectively denied the Plaintiffs access to adequate medical care.

135 At the permanent injunction hearing, Defendants' evidence emphasized the changes to the
136 delivery of mental health services that had been implemented by the IDOC after this Court's Order
137 dated May 25, 2018. The Defendants have implemented policies and procedures that have created
138 improvements in the overall delivery of mental health services. However, the record still shows
139 there are systemic and gross deficiencies in the staffing of mental health providers that have a
140 serious detrimental effect on the overall delivery of medical services to the Plaintiffs. Moreover,
141 while there has been a decrease in the overall backlog of mental health contacts, the Defendants
142 have relied heavily on the use of overtime to achieve these results. The testimony of the
143 Defendants' own witnesses reveals this practice is unsustainable and there is no Plan B.

144 This litigation has unfolded for over a decade. In that time, some changes have been made
145 to increase the quality of care for mentally ill inmates, but it is not enough. Despite the recent
146 serious efforts by the Defendants, the Court finds that a permanent injunction is necessary to force
147 the Defendants to adequately staff their institutions with the necessary mental health providers and
148 other personnel to provide the constitutionally required care.

149 **SETTLEMENT AGREEMENT**

150 On May 23, 2016, the last signature was acquired on the Settlement Agreement purportedly
151 resolving the decade long dispute between the Parties. (ECF No. 711-1 at 33). The Settlement
152 Agreement is a comprehensive document with the purpose of reaching an agreement that settled
153 the litigation in a manner that is "fair, reasonable, and adequate to protect the interests of all
154 parties." (ECF No. 711-1 at 2).

155 The Settlement Agreement allows for the Plaintiffs to seek relief from this Court if there is
156 a dispute as to whether or not the Defendants are in substantial compliance with the terms
157 contained therein. (ECF No. 711-1 at 29). The Settlement Agreement specifically provides:

158 f) If the Court finds that Defendants are not in substantial compliance with a
159 provision or provisions of this Settlement Agreement, it may enter an order
160 consistent with equitable and legal principles, but not an order of contempt, that is
161 designed to achieve compliance.
162
163 g) to permit enforcement of the terms of this Settlement Agreement in federal court,
164 the parties agree that, should it become necessary to seek the Court's assistance as
165 to violations of this agreement, <u>any order granting such relief must include a finding</u>
166 <u>that the relief sought is narrowly drawn, extends no further than is necessary to</u>
167 <u>correct the violation of the federal right, and is the least intrusive means for doing</u>
168 <u>so.</u>
169
170 (ECF No. 711-1 at 30) (emphasis added).

171 The Court has previously found that a preliminary injunctive hearing was an appropriate
172 mechanism under the terms of the Parties' Settlement Agreement and the Prison Litigation Reform
173 Act, 18 U.S.C. § 3626 ("PLRA"). Defendants objected to that procedure arguing Plaintiffs would
174 never have the obligation of actually proving there had been a violation of federal law. (ECF No.
175 1709 at 2). The Court disagreed and noted that the Plaintiffs would ultimately need to seek
176 permanent relief at some point. That, of course, is what the Plaintiffs have done with the filing of
177 their Motion for Permanent Injunction.

178 Moreover, the Plaintiffs specifically note they have not moved for enforcement of the
179 Preliminary Injunction Order under Section XXIX(i) of the Settlement Agreement. (ECF No.
180 2424 at 2). Plaintiffs instead argue they are seeking relief under Section XXIX(d), (f), and (g).
181 The Parties appear to generally agree an action under Section XXIX(d), (f), and (g) would not
182 abrogate the Settlement Agreement. As for an action pursuant to Section XXIX(i), the answer
183 appears more questionable. Section XXIX(i) provides:

184 If Plaintiffs contend that Defendants have not complied with an order entered under
185 the preceding paragraphs, they may, after reasonable notice and meeting with
186 Defendants, move for further relief from the Court to obtain compliance with the
187 Court's prior order. The Court may apply equitable principles and may use any
188 appropriate equitable or remedial power available to it. This may include returning
189 the case to the active docket and setting a trial date. The information gathered by
190 the Monitor during the life of this Settlement Agreement, the Monitor's reports,
191 including all reports and material supplied by Defendants, may be used in Plaintiffs'
192 case at such a trial, along with the testimony of the Monitor, which may address
193 ultimate issues in this case.
194
195 (ECF No. 711-1 at 30). Plaintiffs' current position is inconsistent with their previous position
196 wherein they specifically relied on Section XXIX(i) to support their position that the Monitor's
197 Second Annual Report was admissible. (ECF No. 2264 at 2, "Section XXIX(i) of the Settlement
198 Agreement explicitly provides for the consideration of the Monitor's report and testimony as
199 evidence <u>during a trial in which Plaintiffs contend that Defendants have not complied with a court
200 order enforcing the Settlement Agreement</u>.") (Emphasis added). Moreover, Plaintiffs have
201 asserted the position in their post-hearing brief that Defendants failed to adhere to the terms of this
202 Court's May 25, 2018, Order, arguably invoking Section XXIX(i). (*See e.g.* ECF No. 2406 at 24).
203 Defendants, for their part, argue that "[o]nce the final judgment order is entered, that order
204 will supersede the Settlement Agreement and will provide [P]laintiffs the relief necessary to
205 protect their rights under federal law." (ECF No. 2427 at 7). Defendants argue Plaintiffs have

206 chosen to "reactivate" this case. Of course, the reality is, this case was limited to examining a
207 limited area of the Settlement Agreement.

208 First and foremost, the Court finds that this Order is entered pursuant to Section XXIX(g)
209 of the Parties' Settlement Agreement. This is the Order contemplated by the Parties under that
210 provision. Nonetheless, whether the Plaintiffs' permanent injunction request is brought under
211 XXIX(g) or XXIX(i), the Court finds the Settlement Agreement remains intact. The language of
212 the Settlement Agreement does not address the status after either such hearing. Moreover, it has
213 been clear to both Parties that this hearing was limited to addressing five areas. This was not a
214 "full" trial on the merits on all of the claims; nor was it a situation where the Parties tore up the
215 Settlement Agreement to have this Court decide the outcome on all matters.

216 Additionally, to be clear, this Court has jurisdiction over Plaintiffs' federal claims pursuant
217 to 28 U.S.C. § 1331. There is no dispute as to the Court's jurisdiction. Furthermore, the Parties
218 have specifically provided for a dispute resolution process under the terms of the Settlement
219 Agreement. In order to find liability, the Court must find both a violation of the terms of the
220 Settlement Agreement AND a violation of federal law. (ECF No. 711-1 at 29-30).

221 In that regard, as part of their preliminary injunction request, the Plaintiffs identified five
222 areas where they challenged the adequacy of the mental health treatment and conditions for
223 prisoners required under the terms of the Settlement Agreement and the U.S. Constitution. The
224 five areas included: Mental Health Evaluations (ECF No. 711-1 at 8-9, Section V), Treatment
225 Planning (ECF No. 711-1 at 9-10, Section VII), Medication Management (ECF No. 711-1 at 15-
226 16, Section XII), Mental Health Treatment in Restricted Housing/Segregation (ECF No. 711-1 at
227 16-21, XV), and Mental Health Treatment on Crisis Watch (see e.g. ECF No. 711-1 at 3). Plaintiffs
228 seek their permanent injunction based on violations of these same areas. (ECF No. 2286 at 2).

229 In this Court's previous Order, it found that the Plaintiffs had established all of the
230 necessary requirements for a preliminary injunction to be issued. (ECF No. 2070). The record at
231 that time contained ample evidence to meet the preliminary injunction standard that inmates with
232 mental illness were receiving constitutionally inadequate treatment in the areas of Mental Health
233 Evaluations, Treatment Planning, Medication Management, Mental Health Treatment in
234 Restricted Housing/Segregation, and Mental Health Treatment on Crisis Watch. The Court
235 specifically concluded that the testimony of almost all of the medical doctors at the preliminary
236 injunction hearing established that, in one form or another, the system in place to treat mentally ill
237 inmates at the IDOC was in a state of emergency. (ECF No. 2070 at 6). The Parties have agreed
238 that all of the evidence presented in the preliminary injunction hearing is incorporated into the trial
239 record for determination in this matter. (ECF No. 2286 at 2); *see also* Fed. R. Civ. P. 65(a)(2).
240 Now Plaintiffs move the Court to enter an order converting the Court's Preliminary
241 Injunction Order to a permanent injunction. (ECF No. 2112). In determining whether a permanent
242 injunction should issue, the analysis generally requires a court to consider: (1) whether the plaintiff
243 has suffered or will suffer irreparable injury, (2) whether there are inadequate remedies available
244 at law to compensate for the injury, (3) the balance of hardships, and (4) the public interest. *Sierra*
245 *Club v. Franklin Cty. Power of Illinois, LLC*, 546 F.3d 918, 935 (7th Cir. 2008) *citing eBay Inc. v.*
246 *MercExchange, L.L.C.,* 547 U.S. 388 (2006); *e360 Insight v. The Spamhaus Project,* 500 F.3d 594,
247 604 (7th Cir. 2007). This Court must also consider the parameters of the Parties' Settlement
248 Agreement as noted above. In sum, in order for the Plaintiffs to establish that they suffered (or
249 will suffer) irreparable injury, the Court finds that it must determine whether, by a preponderance
250 of the evidence, the Plaintiffs have proven that the violations of the Settlement Agreement have

251 occurred, and that these violations of the Settlement Agreement establish a constitutional (or other
252 federal right) violation.

253 On October 30, 2018, this Court granted Plaintiffs'[2] Motion for Permanent injunction and
254 entered an Order finding Defendants John Baldwin, Acting Director of the Illinois Department of
255 Corrections ("IDOC"), and Dr. Melvin Hinton, Chief of Mental Health Services and Addiction
256 Recovery Services of the Illinois Department of Corrections (Baldwin and Dr. Hinton are referred
257 to herein as "Defendants"), have been deliberately indifferent to the mental health needs of
258 mentally ill inmates in the custody of the Illinois Department of Corrections in violation of the
259 Eighth Amendment to the United States Constitution. (ECF No. 2460). The Court deferred
260 entering specific injunctive relief, instead allowing Defendants an opportunity to submit a proposal
261 to address their constitutional deficiencies. *Id.* On November 13, 2018, Defendants submitted
262 their proposed remedy order. (ECF No. 2473). On November 20, 2018, Plaintiffs submitted their
263 memorandum in support of their proposed remedy order. (ECF No. 2481). On December 4, 2018,
264 Defendants submitted their Reply. (ECF No. 2496, Defendants' Opposition to Plaintiffs' Proposed
265 Injunctive Relief).

266 **DISCUSSION**

267 All parties and the Monitor recognize the immensity of the challenges facing the
268 IDOC in providing constitutionally adequate mental health care.
269
270 (Pl. Ex. 9, IDOC's Proposed Remedial Plan dated April 17, 2014).
271
272 **Reasons for the Injunction**
273

[2] Plaintiffs have been defined as "[p]ersons now or in the future in the custody of the Illinois Department of Corrections ("IDOC") [who] are identified or should have been identified by the IDOC's mental health professionals as in need of mental health treatment as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association. A diagnosis of alcoholism or drug addiction, developmental disorder, or any form of sexual disorder shall not, by itself, render an individual mentally ill for the purpose of this class definition." (ECF No. 252 at 7).

274 As noted above, the Plaintiffs argue the Defendants are not in compliance with the
275 Settlement Agreement in the areas of Mental Health Evaluations, Treatment Planning, Medication
276 Management, Mental Health Treatment in Restricted Housing/Segregation, and Mental Health
277 Treatment on Crisis Watch. After the preliminary injunction hearing, the Defendants generally
278 acknowledged they had not fully complied with the terms of the Settlement Agreement. (ECF No.
279 1965 at 5). At that point, the Defendants instead argued the evidence at the hearing was insufficient
280 for this Court to make a finding that there has been a systemic lack of substantial compliance.
281 (ECF No. 1965 at 5, Defendants argued "although the Court finds the Department has not fully
282 complied with all aspects of the Settlement Agreement, a finding of a systemic lack of substantial
283 compliance is not supported by the record.").
284 During the permanent injunction hearing, the Defendants primarily focused on what had
285 changed between the preliminary injunction hearing and the permanent injunction hearing. It
286 should be noted that after the permanent injunction hearing, Defendants again acknowledge they
287 are not in full compliance with all of the terms of the Settlement Agreement. However, they argued
288 that "the IDOC now has the leadership, staffing, facilities, and procedures and policies in place to
289 ensure that mentally ill prisoners are reasonably protected against significant harm of
290 decompensation, and are receiving the 'minimal civilized measures of life's necessities' that are
291 required to meet 'contemporary standards of decency' required to provide constitutionally
292 adequate care. (ECF No. 2405 at 3).
293 In support of their case, Defendants offered the testimony of: (1) Baldwin (ECF No. 2370);
294 (2) Jack Yen, M.D., Wexford Health Sources (ECF No. 2370); (3) Inna Mirsky, Ph.D. (ECF No.
295 2370); (4) Dr. Hinton (ECF Nos. 2371 and 2372); (5) William Puga, M.D. IDOC Chief of
296 Psychiatry (ECF No. 2372); (6) Amy Mercer, Illinois Regional Mental Health Quality Assurance

297 Coordinator for Wexford Health Sources (ECF No. 2373); (7) Elaine Gedman; Executive Vice
298 President and Chief Administrative Officer at Wexford Health Sources (ECF No. 2373); (8)
299 William Elliott, Ph.D., Regional Mental Health Director for Illinois at Wexford Health Sources
300 (ECF Nos. 2373 and 2374); (9) Holly Andrilla, Defendants' Expert Witness (ECF No. 2375; *see*
301 *also* Df. Ex. 62, CV of Andrilla); (10) Jeffrey Sim, Statewide Mental Health Quality Improvement
302 Manager, IDOC (ECF No. 2375); (11) Melissa Stromberger, Ph.D., Psychologist Administrator
303 for Hill Correctional Center (ECF No. 2376); (12) Kelly Ann Renzi, Ph.D., Psychologist
304 Administrator at Pontiac Correctional Center (ECF No. 2376); (13) Al Doyle, M.D., Staff
305 Psychiatrist at Dixon Correctional Center (ECF No. 2377); and (14) Cheri Laurent, Vice President
306 of Special Projects for Wexford Health Sources (ECF No. 2377).

307 In support of their position, Plaintiffs called: (1) Pablo Stewart, M.D., Court Monitor (ECF
308 No. 2374); (2) Joe Champ, inmate at Pontiac Correctional Center (ECF No. 2376); (3) Ralph
309 Kings, inmate at Pontiac Correctional Center (ECF No. 236); and (4) Anthony Gay, former inmate
310 within the IDOC (ECF No. 2376). In addition to the testimony taken during the permanent
311 injunction hearing, the Court has also considered the testimony taking during the preliminary
312 injunction hearing, including the testimony of: (1) Dr. Stewart (ECF Nos. 1757, 1758, 1903 and
313 1905); (2) Michael Dempsey, M.D., former staff psychiatrist for Wexford Health Sources from
314 January of 2013 until September 2015, located at Pontiac Correctional Center, former Acting Chief
315 of Health Services, Illinois Department of Corrections, and former Chief of Psychiatry, Illinois
316 Department of Corrections (ECF No. 1757; *see also* Pl. Ex. 28, CV of Dr. Dempsey); (3) Samuel
317 Span, inmate at Pontiac Correctional Center (ECF No. 1758); Dr. Hinton (ECF Nos. 1758 and
318 1906); Corrie Singleton, inmate at Pontiac Correctional Center (ECF No. 1758); Gedman (ECF
319 No. 1903); Gladyse Taylor, Assistant Director, IDOC (ECF No. 1904), Marcus Hardy, Executive

320 Assistant to the Director of the IDOC (ECF No. 1904); Sandra Funk, Chief of Operations, IDOC
321 (ECF No. 1904), Sim (ECF No. 1904), Mercer (*nee* Cantorna) (ECF No. 1904); and Dr. Puga (ECF
322 No. 1905).

323 ***Inadequate Staffing***

324 The Court will address the areas of Mental Health Evaluations, Treatment Planning,
325 Medication Management, Mental Health Treatment in Restricted Housing/Segregation, and
326 Mental Health Treatment on Crisis Watch in turn. However, the Court initially notes that, having
327 fully considered all of the testimony and evidence, it still concludes that the IDOC has failed to
328 maintain adequate staffing levels to provide adequate mental health treatment in compliance with
329 the Constitution. The Court further finds that the deficiencies in several of the areas identified
330 have greatly improved in certain locations within the IDOC. Indeed, Defendants also provide that,
331 particularly since the execution of the Settlement Agreement, the IDOC has continued to build and
332 enhance an entirely new mental health care system. (ECF No. 2405 at 4). In that regard, the
333 Defendants noted, and the Court acknowledges, the IDOC has invested more than $45 million to
334 build new facilities and rehabilitate existing facilities to provide mental health services to the
335 inmates. (ECF No. 1904 at 16). In addition, the IDOC notes that it has obtained funds to build a
336 new $150 million inpatient facility at Joliet. (ECF No. 2405 at 13; ECF No. 1904 at 16, 77). These
337 facilities will ultimately improve the care of mentally ill inmates, but, in and of itself, are
338 insufficient to address the deficiencies in mental health care.

339 The IDOC's inability to properly staff the institutions with psychiatrists has been a
340 persistent problem. (ECF No. 1716, Pl. Ex. 23, providing summary staffing levels for Nov. 2015,
341 Sept. 2016, and June 2017). At the preliminary injunction hearing, Dr. Hinton acknowledged that
342 the IDOC had only 29 psychiatrists available, with a system-wide need of 65 psychiatrists. (ECF

343 No. 1758 at 48). That number has increased, and Dr. Hinton testified that Wexford is now
344 delivering between 50 to 55 psychiatrists for their use in the correctional centers. (ECF No. 2372
345 at 10). Dr. Hinton maintained that Wexford has made substantial improvements in the delivery of
346 full-time equivalents since the preliminary injunction hearing. (ECF No. 2372 at 10). Dr. Hinton
347 also noted that the IDOC has authorized the use of unlimited overtime, use of psychologists on
348 weekends, second shifts, telepsychiatry services at Dixon Correctional Center, and partnering with
349 Southern Illinois University to provide additional psychiatric services at Pontiac Correctional
350 Center and Logan Correctional Center. (ECF No. 2372 at 11, 35, 36, and 42-48). This Court
351 agrees some improvements have been made. Nonetheless, there is still a serious deficiency in the
352 delivery of mental health treatment, and the improvements are driven by an unsustainable use of
353 overtime. Again, the delivery of mental health services will be discussed in the five areas below.

354 To be clear, the Court finds that the record presented establishes by a preponderance of the
355 evidence, there was insufficient staffing at the IDOC at the time of the preliminary injunction. The
356 Defendants have not generally disputed the Court's findings on this issue. The evidence was
357 detailed in this Court's Preliminary Injunction Order but reiterated here for the sake of
358 completeness.

359 First, when asked directly about the ability to provide psychiatric care with such a
360 deficiency in staffing, Dr. Hinton's testimony at the preliminary injunction hearing was clear – the
361 IDOC cannot deliver the required level of care. Dr. Hinton testified as follows:

362 Q. You know today you can't deliver the care—the psychiatric care that is required
363 for the 12,000 patients because you don't have enough psychiatrists?
364
365 A. Correct.
366
367 (ECF No. 1758 at 50).

368 Dr. Hinton was also asked about the dangers the lack of appropriate staffing can have on
369 an individual who is taking psychotropic medicine. His testimony went as follows:

370 Q. And you've heard all the ills that can come if somebody is on psychotropic
371 medicine and it's not being monitored, right?
372
373 A. Correct.
374
375 Q. And you know that's dangerous, don't you?
376
377 A. Correct.
378
379 Q. And you know that the 6,000 people are being endangered every day they're
380 not seen correctly; isn't that right?
381
382 A. Certainly is a concern, yes.
383
384 Q. It's more than a concern. It's your responsibility that they get that care; isn't
385 that right?
386
387 A. Correct.
388
389 Q. And you know they're not getting it?
390
391 A. Correct.
392
393 (ECF No. 1758 at 52-53).
394
395 Dr. Hinton's testimony at the preliminary injunction hearing regarding inmates who are in
396 segregation was extremely troublesome. Dr. Hinton explained:

397 Q. [ ]. Why do you have so many mentally ill people in segregation and so few
398 regular population people in segregation?
399
400 A. I think, in general, the percentage of folks who are mentally ill tend to have more
401 behavioral issues, in part because of their mental illness.
402
403 Q. So, you've got so many of them in segregation because they do -- they don't
404 follow the rules well, right?
405
406 A. In part.
407
408 Q. And has anyone, to your knowledge, wondered whether or not putting mentally
409 ill people in segregation is good for them?

A. Yes.

Q. Who's done that?

A. I have.

Q. And what's your view?

A. My view is there's nothing -- there's nothing that is a good thing about being in segregation. We need to make sure that they have proper access to treatment.

Q. Now, I believe your testimony the last time I took it on that subject was it won't hurt them if we treat them with the treatment they need, right?

A. Access to treatment, correct.

Q. But how do you know they're getting the treatment they need if they're in segregation?

A. That's why we have to make sure that there are no barriers to the access to treatment.

Q. But you don't have enough people?

A. Correct.

Q. So, you know they're not getting the right treatment?

A. We know that there's significant staffing shortages.

Q. They're not getting the right kind of psychiatric care, right?

A. We don't have -- correct, we don't have the right staffing requirements.

Q. They're not getting enough groups because you don't have enough people to run the groups?

A. Correct.

Q. And you know from your own personal judgment that if you're not doing that for people in segregation, they're going to get worse; isn't that right?

A. Across the board.

(ECF No. 1758 at 81-82) (emphasis added).

456 Second, Dr. Michael Dempsey, M.D., staff psychiatrist for Wexford Health Sources from
457 January 2013, until September 2015, who was physically located at Pontiac Correctional Center,
458 also testified about the lack of psychiatric staffing at the IDOC in the following manner:

459 Yeah, we don't have enough psychiatrists to treat the patients. We just don't. If I
460 remember correctly, IDOC had projected that they needed 66-1/2 full-time-
461 equivalent psychiatrists to provide care for the population within the IDOC. I'm
462 not sure if we've reached 25 full-time-equivalents at this point since I haven't been
463 working there for the last six months. I know it's not 66.
464
465 (ECF No. 1757 at 197). Dr. Dempsey further explained the problems associated with the lack of
466 staffing are as follows:

467 I believe that we didn't have enough psychiatrists with the kind of expertise that is
468 necessary to understand the correctional system.
469
470 Corrections is a unique environment. It takes into account the fact that a person
471 with a serious mental illness who is not in a natural environment is somehow
472 expected, without the kind of supports they need, to function adequately, to
473 understand the rules, the regulations.
474
475 And when you have patients who are seriously mentally ill, who may be psychotic,
476 who have impaired reality testing, and you put them in an environment where
477 they're segregated, where they're not treated to any appropriate degree or
478 subtherapeutically, and their options are limited, and they have to make important
479 decisions, I find it becomes an emergent situation.
480
481 (ECF No. 1757 at 199).
482
483 Finally, when discussing the psychiatric and mental health backlog (more fully discussed
484 below), Dr. Stewart explained during the preliminary injunction hearing:

485 Well, you know -- again, that backlog can't be taken in isolation. You gotta look at
486 the overall system. So, here we're talking about, you know, increased use of crisis
487 cells, increased use of restraints, increased use of force, people suffering because
488 of untreated mental illness. All of that has to -- is linked in some way with the fact
489 that patients aren't being seen frequently enough or seen at all.
490
491 (ECF No. 1757 at 260)(Emphasis added). In his Mid-Year Report, Dr. Stewart further explained:

492 IDOC leadership has been well aware of the problems related to the insufficient
493 amount of psychiatric services and yet has been unable to adequately solve this

494 issue. At the time of the submission of this midyear report, however, the lack and
495 quality of psychiatric services continues to negatively impact all aspects of the
496 Settlement and contributes to IDOC being non-compliant in the vast majority of
497 areas of the Settlement. Of note, these deficiencies regarding psychiatric services
498 were reported in the First Annual Report. The Monitor personally met with Director
499 Baldwin on 6/26/17 to discuss this problem. To date, IDOC is yet to effectively
500 address this emergency.
501
502 (ECF No. 1646 at 9).
503
504 The record leaves no question there was constitutionally deficient care being provided by
505 the Defendants at the time of the preliminary injunction hearing. The Court also finds for reasons
506 stated herein, that despite the good efforts of the Defendants, constitutionally deficient care is still
507 being provided. The Court's finding is based generally on the fact that there is insufficient mental
508 health staffing at the IDOC. Moreover, to the extent there have been improvements in the delivery
509 of mental health services, the record is clear those measures are unsustainable.

510 As noted above, Dr. Hinton testified at the preliminary injunction hearing as follows:

511 Q. You know today you can't deliver the care—the psychiatric care that is required
512 for the 12,000 patients because you don't have enough psychiatrists?
513
514 A. Correct.
515
516 (ECF No. 1758 at 50). Dr. Hinton testified at the permanent injunction hearing that the IDOC is
517 now providing adequate care to mentally ill inmates. (ECF No. 2372 at 31). The Court does not
518 doubt the sincerity of Dr. Hinton's current assessment. However, his current position is in stark
519 contrast with the evidence presented at the preliminary injunction hearing only three months
520 earlier, and therefore is viewed with considerable caution. (*See* ECF No. 2070, *ad passim*; *see*
521 *also* ECF No. 2070 at 16-18, Order capturing portions of Dr. Hinton's testimony; *supra*, p. 13-17).
522 Importantly, it appears Dr. Hinton's assessment is based largely on the fact that the IDOC has the
523 "proper procedures in place to provide adequate treatment," and not based on the actual care being
524 given to inmates. (ECF No. 2375 at 5, Dr. Hinton, testifying in a deposition dated August 17,

525 2018, avoided addressing whether inmates were being given adequate care, instead testifying "[i]t
526 is my testimony that we have the proper procedures in place to provide adequate treatment to all
527 of our population.")(Emphasis added). Additionally, it should be noted that Defendants maintain
528 they now have the leadership, staffing, and procedures in place to provide the necessary
529 constitutional care. (ECF No. 2405 at 16). Dr. Hinton also explained that he did not have anything
530 to do with the certification from the IDOC that they were in compliance with the Court's May 25,
531 2018, Order. (ECF No. 2372 at 18). Dr. Hinton specifically explained he was not at every prison
532 for the "day-to-day activit[ies]." *Id.* It is clear the IDOC is concerned with the staffing levels of
533 mental health providers. Baldwin testified that the IDOC continues to ask Wexford for additional
534 mental health staff. (*See also* ECF No. 2370 at 95, Baldwin acknowledges that he understood that
535 the staff Wexford is supposed to provide is the amount necessary to provide the required service).
536 Both Baldwin and Dr. Hinton testified about expanding the relationship with Southern Illinois
537 University and the University of Illinois to provide additional mentally health hours but at present
538 this is *de minimis*. Baldwin testified about the IDOC continuing to engage in recruitment fairs.

539 Like Dr. Hinton, Baldwin also maintains the opinion that the IDOC has enough staff on
540 board to provide adequate medical treatment to the mental ill inmates. (ECF NO. 2453 at 70).
541 However, Baldwin also lacks an adequate basis for his position as it is based on the fact that the
542 IDOC has made progress in its hiring, yet he acknowledges that he does not know to what level
543 the hiring has been made. *Id.* Additionally, Baldwin testified that he "believe[s] [ ] right now [the
544 IDOC] ha[s] an adequate number of psychiatrist[s], and as we get our whole structure in place,
545 [they will] need to increase staff [ ]." *Id.* The fact that the IDOC does not have all the necessary
546 structures in place further demonstrates the problems with the current care for mentally ill inmates.
547 Moreover, the current status of the structures suggests more staff is necessary to compensate for

548 the current deficiencies. (*See also* ECF No. 2354 at 50, Baldwin acknowledging that buildings by
549 themselves do not treat the inmates).

550 Moreover, it is generally undisputed that adequate staffing is necessary to deliver adequate
551 care. In his Second Annual Report of Monitor, Dr. Stewart made it clear that non-compliance with
552 the Settlement Agreement is a direct result of inadequate staffing. (ECF No. 2122 at 9). Even
553 given his change in position, Dr. Hinton acknowledged that it takes the right number of people to
554 provide the required care. (EFC No. 2372 at 31). When pressed regarding the situation at Dixon,
555 Dr. Hinton's position was most telling:

556 Q. So, psychiatrists, 1255, psychologist, 692, QMHPs, 1272, BHTs, 607. That
557 comes to roughly 3700 [hours].
558
559 You got more people vacant – oh, no. You managed to cut the vacancies from 3700
560 to 3000 hours. Is that adequate?
561
562 A. It's an improvement.
563
564 Q. Is it adequate?
565
566 A. Well, I think – I can't answer that yes or no, so –
567
568 (ECF No. 2372 at 49).

569 In July 2018, Defendants submitted their staffing plan. (Pl. Ex. 48A; Df. Ex. 55B).
570 Notably, Defendants' staffing plan provides for the equivalent of 65.75 psychiatrists. (Pl. Ex. 48A;
571 Df. Ex. 55B). The actual number of on-staff psychiatrists sits somewhere between 50-55. *See*
572 *supra*, p. 13. It should also be noted that the staffing shortage is not limited to psychiatrists.
573 Defendants' staffing of Mental Health Directors, Psychologists, Behavioral Health Technicians,
574 and other Mental Health Employees is also deficient. (Pl. Ex. 48A; *see also* Df. Ex. 6 and Df. Ex.
575 38; after the Settlement Agreement was signed in May 2016, the IDOC increased its mental health
576 staffing from 80 FTEs to 453.6 FTEs. In January 2018, the overall headcount was 364.).

577 Again, the testimony at the preliminary injunction hearing clearly established that the
578 mentally ill inmates were receiving inadequate care. As noted above, Dr. Hinton, Dr. Dempsey,
579 and Dr. Stewart each testified about the deficiencies in mental health staff and the impact on the
580 inmates. Dr. Hinton acknowledged at the preliminary injunction hearing that given the
581 deficiencies in staffing, inmates in segregation were getting worse "across the board." Dr. Stewart
582 called the situation an "emergency." Even with the additional mental health staff hired after the
583 preliminary injunction hearing, the numbers associated with mental health providers are deficient
584 to provide the constitutionally required care. In fact, the June 2018 monthly facility performance
585 report showed Wexford had failed to supply more than 10,000 hours of required clinical staff for
586 that month. (Pl. Ex. 51; ECF No. 2376 at 290, Renzi's testimony).

587 The Court has given little weight to the testimony of Holly Andrilla, Defendants' expert,
588 who opined that, statistically, given the public in general, the IDOC has more than enough
589 psychiatrists to treat its mentally ill population. (ECF No. 2375 at 59, Andrilla concluded, among
590 other things, "[e]very facility except Vienna, the ratio of psychiatrists per seriously mentally ill
591 people exceeds the ratio of the general population [ ]."). Andrilla is a research scientist with the
592 WWAMI Rural Health Research Center and the Center for Health Workforce Studies in the
593 Department of Family Medicine at the University of Washington School of Medicine. (Df. Ex.
594 62). The Court takes no issue with the expert's credentials or even her general methodology.
595 However, the Court finds the expert's analysis is inapplicable because her analysis compares the
596 non-prison population with the prison population. (*See* ECF No. 2375 at 82-83, Andrilla explained
597 the source of her data). The doctors and medical providers in this case, on both sides, have
598 meticulously detailed the difficulties in treating the prison population with the current staff. The
599 use of overtime is pervasive, and to put it in terms of the witnesses, "unsustainable." (*See infra*,

600 pp. 23-24). It is impossible to believe there is adequate staff, even with overtime and other efforts,
601 given the significant number of inmates who are not being timely treated based on the Defendants'
602 own backlog assessment. Andrilla's assessment is simply contrary to the testimony and
603 established facts in this case.

604 To fully appreciate the impact of the staffing deficiencies, one need not look much further
605 than the IDOC's backlog. The term "backlog report" was used throughout the preliminary and
606 permanent injunction hearings. The backlog report contains data supplied by the correctional
607 center. Mercer, Illinois Regional Mental Health Quality Assurance Coordinator for Wexford
608 Health Sources, explained her role as quality assurance coordinator is to monitor, report, and
609 translate data related to the IDOC's compliance with the Settlement Agreement. (ECF No. 2373
610 at 6). Mercer noted that, in the past, each facility would use a different mechanism to capture the
611 mental health treatment data. (ECF No. 2373 at 14). Mercer implemented the use of a database
612 template at every facility so that each facility's database would look the same and the facilities
613 would collect the same data. (ECF No. 2373 at 15). Additionally, she focused on getting the
614 facilities to collect and record the appropriate data in the database. (ECF No. 2372 at 6). Mercer
615 explained that some of the data is automatically updated based on data that is manually inputted.
616 (ECF No. 2373 at 10, "[W]hen certain information is entered into the database, for example, the
617 date that an individual is identified as needing mental health services, the date that a person was
618 last seen, what - -the number of days that the provider has indicated that they want to see that
619 person again, the database automatically generates due dates and follow-ups due dates and, *et*
620 *cetera*."). Mercer noted, however, that the failure to manually input certain information can cause
621 inflated numbers in the database. (ECF No. 2373 at 8). Ultimately, the backlog report (psychiatry)
622 represents the backlog in "New/Face to Face," "Follow Up/Face to Face," "New Telepsych," and

623 "Follow up/Telepsych." (*See* Df. Ex. 1F). The backlog is measured in increments of "1-14 day
624 backlogged," 15-30 day backlogged," "31-45 day backlogged," "46-60 day backlogged," and
625 "Greater than 60 day backlogged." *Id.*

626 The numbers on the August 17, 2018, backlog report show an improvement from the
627 numbers presented during the preliminary injunction hearing. (Df. Ex. 1F). Defendants provide
628 that the psychiatric backlog has been reduced to a total of 908. (Df. Ex. 1D and 35B). Defendants
629 further provide that the backlog for new psychiatric appointments has been reduced to nearly zero.
630 (Df. Ex. 1F). Nonetheless, while the backlog number may have been reduced, it is still significant
631 in terms of the timing of the reductions, the current level of backlog, quality, and the methods
632 undertaken to reduce the backlog. The evidence presented at the preliminary injunction hearing
633 showed, as of October 2017, there were a total of 4,010 backlogged contacts. (ECF No. 1757 at
634 213). And as the Court noted in its previous Order, a significant reduction in the backlog only
635 came about at the same time or after the filing of the Plaintiffs' initial Motion. (*See id*., *see also*
636 ECF No. 1559, filed on 10/10/2017). Additionally, Baldwin acknowledged that the backlog had
637 been reduced, at least in part, by overtime, a method he and others acknowledge is not a long-term
638 solution. (ECF No. 2370 at 129, "Not a log-term permanent [solution]. I see it as a short-term
639 [solution].").

640 Confirming the inability to continue the current efforts and the inadequacies of staffing,
641 Renzi, Psychologist Administrator at Pontiac Correctional Center, testified as follows:

642 Q. I notice in the charts and in your testimony that in terms of trying to deal with
643 the backlogs and provide adequate care, you're trying to have people come from
644 other institutions and work there and also offer additional overtime, correct?
645
646 A. Yes.
647
648 Q. That doesn't sound like a very good plan. I mean, is that sustainable in the
649 long term?

650
651 A. In the long term, it would be difficult to sustain that.
652
653 Q. Yes.
654
655 A. However, the mentality – the idea that providing them some service is better
656 than providing them no service.
657
658 Q. Yes. So – but would it be fair to say that you acknowledge that you do need
659 more staff at Pontiac.
660
661 A. I would acknowledge that, yes.
662
663 (ECF No. 2376 at 356). Stromberger, Psychologist Administrator at Hill Correctional Center, also
664 affirmed this with her testimony as follows:
665 Q. Well, how does it all get done if you only have half the staff you're supposed
666 to have?
667
668 A. We work very hard.
669
670 Q. You work overtime, right?
671
672 A. At times.
673
674 Q. And is there burnout because of the excess amount of work?
675
676 A. Yeah.
677
678 Q. And do you lose good people because they're working too hard?
679
680 A. Yeah.
681
682 Q. And isn't that a problem?
683
684 A. I would say.
685
686 --
687
688 Q. Well, do you have an understanding of whether there were deficiencies –
689 continued deficiencies in staffing of mental health people?
690
691 A. Continued deficiencies in terms of staffing. Yes, there's been deficiencies for
692 quite some time for staffing.
693

694 (ECF No. 2376 at 1433-34). In the Court's view there is presently no "Plan B."
695
696 At Dixon Correctional center, part of the plan to reduce the backlog was to have
697 psychologists work on the weekends, non-traditional hours, and second shift. (ECF No. 2372 at
698 43). The Court agrees with Baldwin that the use of overtime is not sustainable. As Dr. Stewart
699 testified, the overtime was putting a strain on employees. (ECF No. 2374 at 264, "Centralia has a
700 minimal backlog, but the staff out there is at wit's end. They don't have enough people."). Dr.
701 Stromberger testified that working excessive overtime causes problems with retention because of
702 burnout. (ECF No. 2376 at 68). The Court has also considered the fact that in many cases the task
703 associated with the backlog had been outstanding in the "1-14 day backlogged" benchmark. (Df.
704 Ex. 1F). Nonetheless, even with the overtime, the backlog is still significant in certain facilities,
705 including Pontiac, Dixon, and Menard. (Df. Ex. 1F). It should be noted that the deficiencies in
706 staffing are not only related to psychiatrists. The deficiencies lie in all areas of mental health staff.
707 (Pl. Ex. 48A; Df. Ex. 55B). This is a real problem, and one that must be addressed now.
708 Both Parties utilize the processes implemented by Dr. Sim in support of their positions.
709 Defendants note that his work has resulted in a useful tool to allow the Defendants to focus on
710 problem areas. Plaintiffs assert the reports show serious deficiencies in the actual delivery of
711 services – and further demonstrate the difficulty with staffing. This Court finds both are correct.
712 Dr. Sim has been tasked with developing and implementing a mental health quality
713 assurance process. Dr. Sim's process includes an audit tool and a mechanism to allow the
714 correctional centers to make corrective action. Dr. Sim described two different audit processes:
715 (1) internal audits, conducted by the psychologist administrator or a social worker at the facility;
716 and (2) external audits, conducted quarterly by regional administrators. Dr. Sim explained that his
717 audit identifies 315 "problem statements." Problem statements are "verbiage" that came from the

718 settlement agreement, standard operating procedures, or the administrative directives. (ECF No.
719 2375 at 125). These problem statements are then placed into four broad categories. (ECF No.
720 2375 at 126-128). The review uses these statements when conducting their audit as follows:

> 721 [ ] when the mental health authorities, the psych administrator or social worker for
> 722 when they conduct their audit, when they open up the documentation, the medical
> 723 charts, if they see that certain things are not being [done] – that is on this list, that
> 724 means it's considered non-compliant.

725
726 (ECF No. 2375 at 126).

727 The internal audit in turn uses these compliance categories and the problem statements to
728 assess the Department's compliance in the following ten areas: (1) Intake; (2) Crisis Writ and
729 Transfer; (3) Mental Health Follow-Up; (4) Mental Health Treatment Plan; (5) Crisis
730 Management, Intervention and Documentation; (6) Psychiatric Services; (7) Mental Health
731 Disciplinary Review/Restricted Housing; (8) Use of Restraints; (9) Mental Health Evaluations;
732 and (10) Supervision for Non-Clinical Licensed Mental Health Staff. (ECF No. 2375 at 130; Df.
733 Ex. 3D). The audits used to be conducted every month. (ECF No. 2375 at 132). Starting in July
734 2018, the audits were conducted every other month. *Id.* Dr. Sim explained this change was to
735 allow mental health staff more time to provide services to inmates. In addition, Sim explained this
736 would allow the auditors the ability to review the data and develop effective corrective action
737 plans. (ECF No. 2375 at 133). The correctional centers can use the results as a tool to take
738 corrective action. Undoubtedly, this is a good thing.

739 However, in July 2018, several of the institutions were performing below the 85%
740 threshold set by the IDOC. (ECF No. 2375 at 180). In some cases, significantly lower. That, in
741 and of itself, does not raise undue concern. But, an examination of the results further reveals the
742 difficulty the IDOC is having with staffing. The following discussion highlights this Court's
743 concerns:

744 Q. For the corrective action plans for Pontiac marked July 18th, these would be the
745 corrective action plans to follow the audit that we just looked at, correct?
746
747 A. Yes.
748
749 Q. Okay. And we see the 20 -- for the first sheet is about mental health treatment
750 plans, and it has that compliance score of 20 percent at the top, correct?
751
752 A. Yes.
753
754 Q. Okay. And the first deficiency is, Mental health treatment plan was not filed in
755 the medical record, correct?
756
757 A. Correct.
758
759 Q. And that's a clerical? It's listed as a clerical error on Missing Information?
760
761 A. Yes.
762
763 Q. That's the category?
764
765 A. Yes.
766
767 Q. But we don't know from this whether the treatment plan just wasn't done or it
768 wasn't filed?
769
770 A. I don't know.
771
772 Q. Okay. But regardless, the action plan is for staff to use overtime to do treatment
773 plans, right?
774
775 A. Yes.
776
777 Q. Okay. And the deficiency number two also relating to treatment plans is that
778 there wasn't -- there was no monthly treatment plan updated for mental health
779 patient in restrictive housing for more than one month. Do you see that?
780
781 A. Deficiency number two.
782
783 Q. Deficiency number two, correct?
784
785 A. Yes.
786
787 Q. So, that would have been one of the top three most common deficiencies for
788 Pontiac in this audit?
789

790 A. Yes.
791
792 Q. And the corrective action plan here is for MHPs to use monthly one-to-one
793 sessions for treatment planning for seg offenders. Do you see that?
794
795 A. Yes.
796
797 Q. So, that means that they're going to take time from the prisoner's individual
798 counseling session to meet the treatment planning requirement, correct?
799
800 A. That's what it shows.
801
802 (ECF No. 2375 at 162-64). This colloquy between Plaintiffs' counsel and Dr. Sim demonstrates
803 the ongoing shift by the Defendants of their limited staff resources from one area of concern to
804 another and the need to cover essential items by use of overtime. This is simply unsustainable.

805 The Court further finds the Defendants have been aware of these deficiencies for an
806 unreasonable period of time, and their failure to address these deficiencies amounts to deliberate
807 indifference. *Wellman v. Faulkner*, 715 F.2d 269, 272 (7th Cir. 1983) (*citing Todaro v. Ward*, 565
808 F.2d 48, 52 (2d Cir. 1977)) ("When systematic deficiencies in staffing, facilities or procedures
809 make unnecessary suffering inevitable, a court will not hesitate to use its injunctive powers.").
810 There have undoubtedly been efforts on the part of the Defendants to address the staffing needs
811 regarding mental health; however, these efforts have been generally ineffective – and have gone
812 on far too long without any significant attempt to adapt or modify based on the knowledge gained
813 from their recruitment efforts. While some efforts have been successful, including the recent
814 expansion of the use of tele-psychiatry, the Defendants have failed to achieve a minimum level of
815 medical service to avoid the label of cruel and unusual punishment. *Id*.

816 ***Medication Management***

817 Dr. Stewart explained that psychiatric conditions are brain illnesses. (ECF No. 1757 at
818 241). Dr. Stewart testified that psychotropic medications can have harsh side effects and require
819 constant monitoring. (ECF No. 1757 at 242, Dr. Stewart specifically explained "[s]ome of [the

820 medication] have some pretty harsh side effect profiles that require constant monitoring [and some
821 that] you need to follow-up with laboratory work; you need to follow-up with [ ]blood pressure
822 monitoring in certain cases [and] follow-up on the abnormal involuntary movement scale.”).
823 Additionally, the failure to properly monitor an inmate’s medication may result in poor medication
824 compliance, including the possibility that the inmate will cease taking medication. (ECF No. 1758
825 at 40, Dr. Stewart testified “where you have poor medication compliance because people are
826 experiencing side effects, and they don't get those addressed, so the medications are just stopped.”).
827 Dr. Stewart ultimately concluded at the preliminary injunction hearing that “[i]t's rare when
828 someone is being seen every 30 days [and he has] [f]ound examples of people being seen -- of
829 medications being routinely written for anywhere from two to six months.” (ECF No. 1757 at
830 243). The reason Dr. Stewart was given by prescribers, the nursing staff, and the clinical
831 administrators for medication being prescribed for longer periods of time was because “[the IDOC
832 doesn’t] have enough people to see people every 30 days so [they] write the meds longer so the
833 meds won't expire, and hopefully [they’ll] see them within a couple months or three months.”
834 (ECF No. 1757 at 243-44). Dr. Stewart also testified that class members were exhibiting severe
835 side-effects that were not charted in their records. (ECF No. 1757 at 251).

836 These conclusions went generally uncontested at the preliminary and permanent injunction
837 hearings. In fact, Dr. Hinton acknowledged at the preliminary injunction hearing that
838 understaffing is a significant problem regarding medication management, noting that thousands of
839 inmates who receive medication in the general population are placed in a dangerous situation by
840 not being seen by psychiatrists. (ECF No. at 319-20).

841 The danger was recognized by the Parties and several provisions were inserted into the
842 Settlement Agreement to insure proper medication management.

843 Sections XII(b) of the Settlement Agreement provides:
844
845 Within ninety (90) days after the approval of this Settlement Agreement, IDOC
846 shall also comply with the provisions of IDOC Administrative Directive 04.04.101,
847 § II(F)(5), except that under no circumstances shall a SMI offender who has a new
848 prescription for psychotropic medication be evaluated as provided therein fewer
849 than two (2) times within the first sixty (60) days after the offender has started on
850 the new medication(s).
851
852 (ECF No. 711-1 at 15). The referenced Administrative Directive provides:
853
854 Offenders who are prescribed psychotropic medication shall be evaluated by a
855 psychiatrist at least every 30 days, with extensions on follow-up care for those who
856 psychiatrist have found and documented that the offender has reached stability
857 (outpatient level of care: Not to exceed 90 days; RTU level of care: not to exceed
858 60 days).
859
860 Additionally, the Settlement Agreement requires:
861
862 The regular charting of medication efficacy and side effects, including both
863 subjective side effects reported by the patient, such as agitation, sleeplessness, and
864 suicidal ideation, and objective side effects, such as tardive, dyskinesia, high blood
865 pressure, and liver function decline [and]
866
867 Adherence to standard protocols for ascertaining side effects including client
868 interviews, blood tests, blood pressure monitoring, and neurological evaluations [
869].
870
871 (ECF No. 711-1 at 15).

872 In addition to the staffing issues discussed above, the evidence at the permanent injunction
873 hearing revealed the continuation of significant issues with the IDOC's medication management.
874 First, the mental health staff at the correctional centers recognize there is an issue with follow-up
875 because the nursing staff who administer the medications do not notify them when inmates are
876 non-compliant. Dr. Renzi testified that a lot of the inmates will accept the medication from the
877 nurse, and then put the medication in their mouth as to appear as though they are taking it. (ECF
878 No. 2376 at 278). However, the inmates may "cheek" the medication or swallow it, and later
879 regurgitate it. *Id.* Dr. Renzi acknowledged that Pontiac continues to have difficulty in assuring

880 that offenders are actually taking their medication, but there have been educational efforts to train
881 staff. (ECF No. 2376 at 277-79). Dr. Stromberger testified that nursing staff are not fully aware
882 of referral protocol when class members refuse medications. (ECF No. 2376 at 48). Dr.
883 Stromberger, however, did note that there had been some educational follow-up on that issue.

884 This testimony is consistent with Dr. Stewart's testimony during the preliminary injunction
885 hearing. Dr. Stewart testified that one major problem is that inmates are given their medications
886 but not monitored closely to ensure they have ingested the pills, especially in segregation. (ECF
887 No. 1757 at 123). Dr. Stewart testified one of the inmates he visited had numerous pills on his
888 person that he had not taken. (ECF No. 1757 at 254). It should be noted that Dr. Puga is certainly
889 aware of these issues and has been working on measures to assist in medication compliance. (ECF
890 No. 2372 at 136-37). Nonetheless, these issues again highlight the general staffing issues and the
891 need for additional measures to be considered.

892 ***Mental Health Treatment in Segregation***

893 Segregation refers to an inmate's confinement in his or her cell for a period of 22 to 23
894 hours a day. (ECF No. 1757 at 103). In the IDOC, over 80% of the inmates in the IDOC who are
895 in segregation are mentally ill. (Pl. Ex. 22, 897 out of 1105 inmates in segregation are mentally
896 ill). Dr. Hinton opined that the "percentage of [inmates] who are mentally ill tend to have more
897 behavioral issues, in part because of their mental illness." (ECF No. 1758 at 81). Dr. Hinton
898 further opined that "there's nothing that is a good thing about being in segregation." *Id.*
899 Supporting such an opinion, Dr. Stewart testified "[a] person with a pre-existing mental illness
900 placed in segregation will have an exacerbation of their pre-existing mental illness." (ECF No.
901 1757 at 109). Segregation can also cause a degradation of coping mechanisms and lead to
902 increases in self-harm and other acting-out behaviors. (ECF No. 1757 at 109-111). Dr. Renzi also
903 agreed that segregation can have a negative effect on mental illness. (ECF No. at 2376 at 295).

904 Inmates Champs, King, Span, and Singleton all testified about their negative experience in
905 segregation. (ECF No. 2376 at 91-112, 113-148; ECF No. 1758 at 271-287, 394-412). Given this,
906 it is clear mental health issues must be addressed for mentally ill inmates in segregation.

907 Under Sections XV(a)(iii), the Parties agreed that:
908
909 Mentally ill offenders in segregation shall continue to receive, at a minimum, the
910 treatment specified in their Individual Treatment Plan (ITP). Treating MHPs and
911 the Warden shall coordinate to ensure that mentally ill offenders receive the
912 services required by their ITP.
913
914 (ECF No. 711-1 at 17). The Settlement Agreement places certain timeframes on MHP's review
915 of, and updates to, the treatment plans for mentally ill offenders placed in segregation. *Id*. Dr.
916 Stewart explained the purpose of this requirement is simple – when you place an inmate "into a
917 segregation system, you need to review and update the treatment plan given the vastly different
918 environment the person is in."[3] (ECF No. 1905 at 82).

919 During the preliminary injunction hearing, Dr. Stewart testified that the IDOC's medication
920 management for those in segregation is worse than for Class Members elsewhere in the system.
921 (ECF No. 1757 at 123). Dr. Stewart specifically noted that there is a significant problem in the
922 failure to ensure that those in segregation who are prescribed psychotropic medication actually
923 take the medication. (ECF No. 1757 at 123). Additionally, there was testimony and evidence
924 during the preliminary injunction hearing regarding Defendants' non-compliance with the out-of-

[3] It should be noted that Dr. Stewart also explained that inmates in segregation are:

> [ ] some of the sickest individuals psychiatrically that I've seen in my career, and I've only worked with seriously mentally ill. And these people are just suffering immensely.
>
> And so -- you know, and they get nothing. Couple little things thrown at them. But they really don't get any sort of regular treatment.
>
> And so this is a real serious issue, you know. I don't want to put a number on it. It's, it's -- it's as serious as I've seen.

(ECF No. 1905 at 182-83).

925 cell time required for mentally ill inmates placed in segregation. (ECF No. 1757 at 136; s*ee also*
926 ECF No. 711-1 at 20, Section XV(c) of the Settlement requires "mentally ill offenders in a Control
927 Unit setting for longer than sixty (60) days shall be afforded out-of-cell time.")

928 Dr. Stewart explained at the preliminary injunction hearing that the consequences of this
929 failure are:

930 [ ] psychiatric decompensation. And then we run into that whole line, you know,
931 acting out, writing up, more segregation time and/or going to crisis, coming out. It's
932 -- the fact that (vi)(A), which is continuation of the initial treatment plan with
933 enhanced therapy, if necessary, to protect from decompensation that may be
934 associated with segregation, that's not being done. People are getting worse in
935 segregation.
936
937 (ECF No. 1905 at 174).

938 In addition to the above, during the permanent injunction hearing, there was additional
939 evidence presented regarding inmates' out-of-cell time. In the record it is generally accepted that
940 out-of-cell time for mentally ill inmates in segregation is necessary to avoid a rapid decline in
941 mental health. Plaintiffs argue that the lack of adequate structured out-of-cell time is a continuation
942 of the Defendants' failure to meet their obligation under Section XV(c) of the Settlement
943 Agreement. Plaintiffs also argue that Defendants are not adequately addressing an inmate's refusal
944 to participate in out-of-cell time.

945 As it relates to Menard, Pontiac, and Dixon, the "received" and "received minus refusal"
946 structured out-of-cell time by inmates during June 24, 2018, through June 30, 2018, was
947 summarized in Plaintiffs' Exhibits 45B, 45C, and 45D. Plaintiffs presented information regarding
948 these institutions because they have large segregation populations. (*See* ECF No. 2374 at 124, Dr.
949 Stewart testified that "I know Pontiac has a very large segregation population, but Menard also has
950 a large segregation population."). The evidence showed inmates were receiving an average of 6.05
951 hours at Menard, 6.97 hours at Pontiac, and 9.3 hours at Dixon. (Pl. Ex. 45B, 45C, and 45D).

952 However, it was noted that "received" hours included those that were taken and offered but
953 refused. *Id*. The actual average out-of-cell time was 4.24 hours at Menard, 2.996 hours at Pontiac,
954 and 3.13 hours at Dixon. *Id*. Parenthetically, it should be noted that the majority of structured
955 out-of-cell time was by way of movies. (Pl. Ex. 45A; *see also* ECF No. 2374 at 126[4]).

956 The most significant issue raised by these numbers is the importance of staffing. Dr. Doyle
957 and Dr. Mirsky both testified that refusing group or other mental health services can be a potential
958 indicator of decompensation. (ECF No. 2377 at 48; ECF No. 2370 at 276). Nonetheless, the record
959 indicates a lack of concern or follow-up for those individuals refusing to participate in these
960 activities.

961 ***Mental Health Treatment on Crisis Watch***

962 Like segregation, inmates who are on crisis watch are in isolation and additional care is
963 necessary to avoid exacerbating their mental health issues. Crisis refers to an acute exacerbation
964 of mental illness, such as worsening psychosis or mania, or acting out behaviorally, or when
965 someone is acutely suicidal or potentially violent. (ECF No. 1757 at 51-53). The purpose of crisis
966 cells or watches in correctional mental health systems is to, first, protect the individual from self-
967 harm or harming others, and second, to provide appropriate mental health assessment and
968 intervention, such as re-evaluating medication, re-evaluating the psychosocial treatment, and
969 addressing whatever issues precipitated the crisis (ECF No. 1757 at 219; *see also* at 38, Dr. Stewart

---

[4] Dr. Stewart testified about the use of movies as a structured treatment activity:

> It certainly would -- it could contribute to lessening the decompensation, but I don't -- it's not a -- necessarily a therapeutic activity, so I would question its validity for that purpose.
>
> I think it's a good thing to get people out of their cells and doing anything. I want to be real clear about that.

(ECF No. 2374 at 126).

970 explained that the crisis level of care is needed to assist "people that are presenting with acute
971 problems that need aggressive intervention to deal with a particular acute issue."). During the
972 preliminary injunction hearing, Dr. Stewart testified that it is "imperative that their treatment is
973 reviewed, not just by one individual but for the entire treatment team that's involved with the case
974 [ ] [a]nd that's not happening." (ECF No. 1757 at 52).

975 The Settlement Agreement provides certain requirements as it relates to crisis treatment.
976 First, the Settlement Agreement provides:

> 977 Beds that are available within the prison for short-term (generally no longer than
> 978 ten (10) days unless clinically indicated and approved by either a Mental Health
> 979 Professional or the Regional mental Health Administrator) aggressive mental
> 980 health intervention designed to reduce the acute, presenting symptoms and
> 981 stabilized the offender prior to transfer to a more or less intensive care setting, as
> 982 required by IDOC Administrative Directive 04.04.102, § II(F)(2).

983
984 (ECF No. 711-1 at 3).
985
986 Dr. Stewart testified at the preliminary injunction hearing that, based on his review, the
987 only treatment that regularly occurs on crisis watches is the daily contact by the MHP, which are
988 confidential sessions at some facilities but take place most often at the cell front. (ECF No. 1905
989 at 131). Dr. Stewart explained that:

> 990 But again, as I said, the only thing that occurs is being placed in the cell, having
> 991 certain property removed, and then getting these daily visits. <u>And so there's no</u>
> 992 <u>specialized treatment that occurs for people in crisis</u>.

993
994 (ECF No. 1903 at 198-99) (emphasis added).
995
996 The Settlement Agreement also provides:
997

> 998 For offenders transitioning from Crisis placement, there will be a five (5) working
> 999 day follow-up period during which the treating MHP will assess the offender's
> 1000 stability on a daily basis since coming off Crisis watch. This assessment may be
> 1001 performed at cell front, using a form which will be specifically designed for this
> 1002 purpose by IDOC and approved by the Monitor. This five-day assessment process
> 1003 will be in addition to IDOC's current procedure for Crisis transition, which IDOC
> 1004 will continue to follow. This procedure requires an MHP to conduct an Evaluation

1005 of Suicide Potential (IDOC Form 0379) on the offender within seven (7) calendar
1006 days of discontinuation from Crisis Watch, and thereafter on a monthly basis for at
1007 least six (6) months. Findings shall be documented in the offender's medical record.
1008
1009 (ECF No. 711-1 at 10).
1010
1011 Dr. Stewart concluded that, at the time of the preliminary injunction hearing, Defendants
1012 are only conducting the first suicide evaluation, but are not continuing to assess monthly for six
1013 months. (ECF No. 1757 at 232). Dr. Stewart also opined that the Defendants' failure to conduct
1014 necessary evaluations and assessments of those who are discharged from crisis watches results in
1015 unnecessary harm and suffering, especially as those failures combine with inadequate treatment
1016 planning and psychopharmacology. (ECF No. 1757 at 231). There was no evidence to the contrary
1017 presented by the Defendants about the conditions at the time of the preliminary injunction hearing.
1018 Additionally, evidence regarding crisis watch was presented during the permanent injunction
1019 hearing. Most notably, Plaintiffs presented evidence of inmates who were kept on crisis watch
1020 longer than 10 days. In June 2018, there were 620 inmates placed on crisis watch, in July 2018,
1021 there were 486. (Pl. Ex. 53; Pl. Ex. 43). Of those inmates, 85 were kept on crisis watch longer
1022 than 10 days in June, and 121 inmates met that criteria in July. (ECF No. 2374 at 111-12; Pl. Ex.
1023 43; ECF No. 2376 at 314, Dr. Renzi's Testimony). The IDOC's Mental Health Procedures Manual
1024 provides that "patients who remain on crisis treatment level of care after ten consecutive days will
1025 be considered for a higher level of care." (Df. Ex. 49, p. 31). The record reveals little compliance
1026 with this requirement.
1027 Moreover, Dr. Mirsky confirmed Dr. Stewart's finding that inmates on crisis watch are
1028 getting between 15-20 minutes of time with qualified mental health profesisonals and little other
1029 time. Notably, Dr. Doyle explained:

1030 "[If the IDOC had additional staff] it would mean that we could spend more time.
1031 Some people, it takes them a few minutes just to get comfortable sitting with you
1032 as a psychiatrist. So we could establish better rapport.
1033
1034 Looking at the reverse as to what the damage is, I'm hoping that we're not doing
1035 any damage, but I couldn't say for sure if there isn't some."
1036
1037 (ECF No. 2377 at 81).

1038 ***Mental Health Evaluations***

1039 As previously noted, there is no dispute the Defendants have failed to comply with Section
1040 V(f) of the Settlement Agreement. Section V(f) provides:

1041 Evaluations resulting from a referral for routine mental health services shall be
1042 completed within fourteen (14) days from the date of the referral (*see* IDOC
1043 Administrative Directives 04.04.100 § II(G)(2)(b) and 04.04.101 §II(F)(2)(c)).
1044
1045 (ECF No. 711-1 at 8).
1046
1047 There was much evidence regarding the significant backlog in psychiatric contacts with
1048 inmates. Contacts are activities that psychiatrists and mental health professionals are supposed to
1049 accomplish, including evaluations, treatment plans, and follow-up. (ECF No. 1757 at 212-13).
1050 The Defendants argue that the backlog has substantially declined, noting that there is now
1051 a backlog of 313 initial evaluations. (ECF No. 1894, Df. Ex. 1a; *but see also* ECF No. 1757 at
1052 213, where it was noted there was a backlog of 445 evaluations, 780 treatment planning contacts,
1053 and 2,785 follow-up visits; *compare with* Df. Ex. 1). The Defendants further note that a significant
1054 amount of these are only delayed 1-14 days. Finally, the Defendants suggest that the record does
1055 not identify the number of mentally ill prisoners at the various facilities, and thus, the Court is
1056 unable determine how the number of late evaluations at those four facilities compares to the
1057 number of mentally ill prisoners at those facilities. (ECF No. 1965 at 14). The Defendants'
1058 argument that the Court is unable to determine the extent of the problem based solely on the size
1059 of the backlog without additional information regarding the population is unpersuasive. Dr. Hinton

1060 testified as to the unacceptable nature of the backlog existing at the time of the preliminary
1061 injunction hearing. (ECF No. 1758 at 52, *et seq.*).

1062 As discussed before, while the backlog number may have been reduced, it is still significant
1063 in terms of timing of the reductions, the current level of backlog, quality, and the methods
1064 undertaken to reduce the backlog. *Supra*, p. 22-24. The current system's reliance on overtime is
1065 not viable. *Id.*

1066 ***Mental Health Treatment Plans***

1067 The treatment plan document plays a very important role in the delivery of mental health
1068 care – it guides the treatment of an inmate. (ECF No. 1906 at 106, 113, Dr. Hinton's Testimony;
1069 *see also* 280, Dr. Mirsky acknowledging treatment plans are the most fundamental document in
1070 the whole mental health system). The plan is created for each inmate who is diagnosed with a
1071 mental illness or receiving mental health care services. (ECF No. 1906 at 112). The treatment
1072 plan should capture how treatment is ultimately delivered and the goals of treatment. (ECF No.
1073 1906 at 38). The IDOC utilizes the treatment plan to make sure that the inmate consents to the
1074 treatment. *Id.*

1075 The Settlement Agreement provides:

1076 As required by IDOC Administrative Directive 04.04.101, § II(F)(2)(c)(4), any
1077 offender requiring on-going outpatient, inpatient or residential mental health
1078 services shall have a mental health treatment plan. Such plans will be prepared
1079 collectively by the offender's treating mental health team.
1080
1081 (ECF No. 711-1 at 9).

1082 Plaintiffs have generally argued that the treatment plans are being done in a perfunctory
1083 manner that do not facilitate the delivery of mental health services. (ECF No. 1559 at 14; *see also*
1084 ECF No. 2406 at 78, "The treatment plans in IDOC are not helpful and do not facilitate the

1085 provision of mental health care; the forms are completed more as an administrative requirement
1086 and not true treatment planning.”).

1087 This Court’s May 25, 2018, Order required that “[a]ll class members shall have a treatment
1088 plan that is individualized and particularized based on the patient’s specific need, including long
1089 and short term objectives, updated and reviewed with the collaboration of the patient to the fullest
1090 extent possible.” (ECF No. 2070 at 41).

1091 The evidence at the preliminary injunction hearing makes it clear that the lack of adequate
1092 staffing significantly impacts treatment planning. Defendants argue the full record shows the
1093 IDOC has made substantial improvements with respect to treatment planning. This includes the
1094 use of a revised treatment plan document reviewed and approved by Dr. Stewart. (Df. Ex. 13).
1095 The problem arises, however, in the actual completion of the treatment plans. The mental health
1096 providers are so overworked that the treatment plans often become perfunctory.

1097 Plaintiffs presented the Court with treatment plans from inmates at Pontiac Correctional
1098 Center. (ECF No. 2374 at 180). These treatment plans contained identical, or nearly identical,
1099 language describing the therapeutic focus, problems, and activity. (*See* Pl. Ex. 55C, 55G, 55I, and
1100 55M). Dr. Stewart opined:

1101 What I – what I glean from this, in all seriousness, is this is a reflection of how
1102 overworked the mental health professionals are, where they are basically cutting
1103 and pasting these things because it’s just one more requirement they have because
1104 they’re stretched way too thin. That’s how I read this.
1105
1106 These treatment plans are identical. They’re basically all worthless. They may
1107 apply to one of these people, and there may be some overlap, but come on, the same
1108 wording on four different patients?
1109
1110 So, that’s why I see this as the mental health professionals – and this confirms, you
1111 know, my walking around Pontiac. These people are just really – they’re hurting
1112 out there, the mental health professionals, because they have so much work, and
1113 there’s not enough.
1114

1115 (2374 at 188).

1116 ***Deliberate Indifference***

1117 The above demonstrates the Defendants have breached the Settlement Agreement in the
1118 five areas advanced by the Plaintiffs. In order to warrant action by this Court, the Court must also
1119 find there is a violation of federal law.

1120 To establish an Eighth Amendment violation, Plaintiffs must prove that Defendants have
1121 been deliberately indifferent to their serious medical needs, and in this case, their mental health
1122 needs. "[D]eliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary
1123 and wanton infliction of pain' proscribed by the Eighth Amendment." *Estelle*, 429 U.S. at 104
1124 (citations omitted).

1125 An inadequate medical care claim requires a plaintiff to fulfill two elements: (1) the
1126 plaintiff "suffered an objectively serious harm that presented a substantial risk to his safety," and
1127 (2) "the defendants were deliberately indifferent to that risk." *Minix v. Canarecci*, 597 F.3d 824,
1128 831 (7th Cir. 2010). The objective element requires that the plaintiff's medical need to be
1129 "sufficiently serious." *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997). The subjective
1130 element requires that the "official must both be aware of facts from which the inference could be
1131 drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer*
1132 *v. Brennan,* 511 U.S. 825, 837 (1994).

1133 To meet the objective prong, the medical need must be one that has been diagnosed by a
1134 physician as mandating treatment or one that is so obvious that even a lay person would easily
1135 recognize the necessity for a doctor's attention. *Gutierrez*, 111 F.3d at 1373. A medical condition
1136 "need not be life-threatening to be serious; rather, it could be a condition that would result in
1137 further significant injury or unnecessary and wanton infliction of pain if not treated." *Gayton v.*

1138 *McCoy*, 593 F.3d 610, 620 (7th Cir. 2010). The Seventh Circuit has agreed with other courts in
1139 concluding that the "[t]reatment of the mental disorders of mentally disturbed inmates is a "serious
1140 medical need." *Wellman*, 715 F.2d at 272 (citing *Ramos v. Lamm,* 639 F.2d 559, 574 (10th Cir.
1141 1980)); *Inmates v. Pierce,* 612 F.2d 754, 763 (3d Cir. 1979); *Bowring v. Godwin,* 551 F.2d 44, 47
1142 (4th Cir. 1977).

1143 The subjective component requires a plaintiff to "provide evidence that an official actually
1144 knew of and disregarded a substantial risk of harm." *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir.
1145 2016); *Farmer*, 511 U.S. at 837. In order to establish deliberate indifference, "a plaintiff does not
1146 need to show that the official intended harm or believed that harm would occur." *Id.,* (*citing*
1147 *Farmer*, 511 U.S. at 842). However, medical malpractice, negligence, or even gross negligence
1148 do not equate to deliberate indifference. *Johnson v. Doughty*, 433 F.3d 1001, 1013 (7th Cir. 2006).
1149 *See also Estelle*, 429 U.S. at 106; *McGee v. Adams*, 721 F.3d 474, 481 (7th Cir. 2013).

1150 The Seventh Circuit has recognized claims of systemic deficiencies in a prison's health
1151 care facility as a second category of deliberate indifference claims. *Cleveland-Perdue v. Brutsche,*
1152 881 F.2d 427, 430–31 (7th Cir. 1989). In case of alleged systemic deficiencies, deliberate
1153 indifference can be demonstrated by "proving there are such systemic and gross deficiencies in
1154 staffing, facilities, equipment, or procedures that the inmate population is effectively denied access
1155 to adequate medical care." *Wellman*, 715 F.2d. at 272 (citing *Ramos*, 639 F.2d at 575); *Phillips v.*
1156 *Sheriff of Cook Cty.*, 828 F.3d 541, 554 (7th Cir. 2016), *reh'g and suggestion for reh'g en banc*
1157 *denied* (Aug. 3, 2016) (Claims of "systemic deficiencies at the prison's health care facility rendered
1158 the medical treatment constitutionally inadequate for all inmates, [ ]" plaintiffs must demonstrate
1159 that "there are such systemic and gross deficiencies in staffing, facilities, equipment, or procedures
1160 that the inmate population is effectively denied access to adequate medical care.")). The Seventh

1161 Circuit has concluded "that a clear consensus had been reached indicating that a prison official's
1162 failure to remedy systemic deficiencies in medical services akin to those alleged in the present case
1163 constituted deliberate indifference to an inmate's medical needs." *Cleveland-Perdue*, 881 F.2d at
1164 431. *See Newman v. Alabama*, 503 F.2d 1320 (5th Cir. 1974), (affirming a district court decision
1165 finding that systemic deficiencies in the Alabama prisons including inadequate staffing, treatment
1166 by unqualified personnel, incomplete medical records, and lack of written procedures establishing
1167 the duties and responsibilities of the medical personnel.).

1168 There is no dispute that the Plaintiffs suffer from serious medical conditions. (*See supra*,
1169 p. 2, definition of class). The Court has also found above that the Defendants have failed to provide
1170 medical treatment as required by the Settlement Agreement in the five areas advanced by the
1171 Plaintiffs. The Court also finds that the failure to provide treatment in the above areas puts the
1172 Plaintiffs at a significant risk for further injury and severe unnecessary pain and suffering. At the
1173 time of the preliminary injunction hearing, this fact was firmly established. Dr. Hinton, Dr.
1174 Dempsey, and Dr. Stewart all testified that the conditions in the IDOC, particularly the deficiencies
1175 in staffing, created a substantial risk of harm for mentally ill inmates. *Supra,* p. 13-17. These
1176 doctors used terms such as "dangerous," "emergent," and "emergency," to describe the situation.
1177 Given this evidence, and considering the standard outlined in *Wellman*, this Court finds the
1178 Defendants' inadequate staffing levels creates a systemic problem that has effectively denied the
1179 mentally ill inmates access to adequate and constitutionally required care.

1180 It should be noted that Defendants maintain the position that the law requires this Court to
1181 limit its decision to the care currently being provided by the Defendants. (ECF No. 2368 at 1).
1182 The Defendants further maintain any issues concerning the care the IDOC provided in the past are
1183 moot and irrelevant to a claim seeking forward-looking injunctive relief. *Id*. In support of their

1184 positions, Defendants note that the Supreme Court has explained that "deliberate indifference,
1185 should be determined in light of the prison authorities' current attitudes and conduct [ ]." (ECF
1186 No. 2368 at 3); *Helling v. McKinney*, 509 U.S. 25, 36 (1993). Defendants further note that a
1187 plaintiff pursuing a permanent injunction must demonstrate a continuing need for the injunction
1188 "during the remainder of the litigation and into the future," and even if prison officials "had a
1189 subjectively culpable state of mind when the lawsuit was filed," they "could prevent issuance of
1190 an injunction by proving, during the litigation, that they were no longer unreasonably disregarding
1191 an objectively intolerable risk of harm and that they would not revert to their obduracy upon
1192 cessation of the litigation." *Id.*; *Farmer*, 511 U.S. 825, 846 and n. 9 (1970).

1193 In *Helling*, the Plaintiff complained that he was exposed to unreasonably high levels of
1194 environmental tobacco smoke due to his cellmate's smoking habits. *Id.* The Supreme Court found
1195 Plaintiff stated a claim, but cautioned that he may have difficulty in proving the objective and
1196 subjective factors of a deliberate indifference claim because he had since been moved to a new
1197 prison, no longer had a cellmate who smoked, and the state had enacted new policies in effect
1198 regarding smoking. *Id.* Here, much of this case surrounds the Defendants' most recent actions –
1199 or actions since the preliminary injunction was issued – to correct significant deficiencies in the
1200 delivery of mental health treatment. The Supreme Court and Seventh Circuit precedent require
1201 this Court to consider the totality of the circumstances, including the condition as described at the
1202 preliminary injunction hearing, the chances of these conditions reoccurring, as well as the current
1203 attitude of the Defendants, in considering whether or not a permanent injunction should issue.
1204 Additionally, the Court has relied on the fact that the Defendants' actions frequently occur in
1205 response to the Court's intervention. *See Coleman v. Wilson*, 912 F. Supp. 1282, 1311 (E.D. Cal.
1206 1995) (The Court in granting a permanent injunction cited the defendants' history of refusing "to

1207 address the serious issues underlying the preliminary injunction until forced to do so under
1208 pressure of this litigation.”).

1209 Defendants also argue that the problem is no longer systemic but only one that affects a
1210 few of the institutions. The Defendants specifically note the weekly backlog report shows that as
1211 of August 17, 2018, twelve facilities had no backlog with respect to treatment plans, six facilities
1212 had only ten or fewer total backlogs in treatment plans, while another seven institutions had fewer
1213 than 40 backlogged treatment plans. (Df. Ex. 1D and DX 1I). There is no doubt the Defendants
1214 have been able to reduce the backlogs generally and even substantially at certain institutions.
1215 However, the backlog remains a real issue within the IDOC given the significant problems with
1216 documentation as well as the widespread use of overtime to handle most of the staffing needs to
1217 address the backlog. Moreover, the ability to minimize the backlog at certain locations comes at
1218 the cost of providing care in other areas. The Defendants have failed to put forth any long-term
1219 sustainable solution to address their staffing needs.

1220 The record also establishes the Defendants knew of, and disregarded, a substantial risk of
1221 harm to the Plaintiffs. While the record shows the Defendants have made efforts to address many
1222 of the problems associated with the delivery of adequate mental health care, particularly recently,
1223 the Court remains concerned with the overall lack of a sense of urgency. As previously noted in
1224 this Court’s Preliminary Injunction Order, the issues associated with the staffing deficiencies
1225 began as far back as 2014 when the Defendants created their own 2014 remedial plan, and at this
1226 time, the Defendants have yet to fulfill any of their own staffing requirements. A significant
1227 problem with the Defendants’ approach is the reliance on Wexford to provide the necessary
1228 staffing to fulfill their constitutional obligation. This record demonstrates Wexford has been
1229 unable to handle this job, a job the Defendants are unable to delegate to evade their constitutional

1230 duties. (*See* Pl. Ex. 7, p. 2, Wexford long recognized the need to amplify its recruitment efforts).
1231 High level officials in the Governor's office have written Wexford "encouraging" them to fill the
1232 required positions, yet the staff necessary to provide constitutional care has yet to be hired; nor
1233 have the Defendants generally sought to take a different approach. (ECF No. 2354 at 72; Pl. Ex.
1234 59, p. 3; *see also* ECF No. 2354 at 76, Baldwin testified that they depend on their partners for
1235 filling the vacancies.). The Court recognizes that the changes needed in the IDOC have been
1236 monumental. The Parties also recognized this and entered into a comprehensive Settlement
1237 Agreement providing deadlines and budget contingencies. However, the Defendants have failed
1238 to meet many of the terms. It is clear mentally ill inmates continue to suffer as they wait for the
1239 IDOC to do what it said it was going to do. (*See supra*, fn. 2). The Court cannot allow this to
1240 continue. The Court further finds that there is no adequate remedy at law. The Defendants must
1241 provide adequate and constitutionally required care for mentally ill inmates.

1242 Defendants argue the balancing of harms weighs in their favor as Plaintiffs have not met
1243 their burden of proof to show the class members are currently facing a sufficiently identified harm
1244 in the absence of granting additional prospective relief. The Court disagrees with Defendants'
1245 assessment for the reasons stated herein. The Defendants also argue that compliance with a Court
1246 imposed order taxes an already over-worked mental health staff. This argument further
1247 demonstrates the need for additional staff.

1248 Given all of this, the Court finds that a permanent injunction must issue in order to ensure
1249 the constitutionally required care will be given to the mentally ill inmates in the custody of the
1250 Defendants.

1251 In sum, the Court finds that Defendants have been deliberately indifferent to the medical
1252 needs of the Plaintiffs in medication management, mental health treatment in segregation, mental

1253 health treatment on crisis watch, mental health evaluations, and mental health treatment plans
1254 within the meaning of the Eighth Amendment.

1255 The Court further finds the Plaintiffs have established by a preponderance of the evidence
1256 that a permanent injunction is appropriate and necessary. The Court specifically finds that the
1257 Plaintiffs have suffered or will suffer irreparable injury if a permanent injunction is not issued.
1258 There are significant deficiencies in the delivery of mental health services within the IDOC. The
1259 evidence establishes that there are systemic and gross deficiencies in staffing that effectively
1260 denied the Plaintiffs access to adequate medical care. The Plaintiffs are at a significant risk of
1261 harm. The Court further finds that there are no adequate remedies available at law to compensate
1262 for these injuries. Plaintiffs are mentally ill inmates incarcerated within the IDOC, and Defendants
1263 are required to provide adequate care. The balance of hardships weighs heavily in favor of the
1264 Plaintiffs. While appropriately staffing the IDOC with mental health providers is a significant
1265 task, it is one that can, and must, be done. The public interest also weighs heavily in favor of the
1266 Plaintiffs.

1267 In considering the appropriate remedy, Defendants correctly provide that the Court issued
1268 its Order as contemplated under §XXIX(g) of the Parties' Settlement Agreement. (*See* ECF No.
1269 2460 at 8; ECF No. 711-1, Settlement Agreement). Section XXIX(g) of the Settlement Agreement
1270 provides:

1271 If the Court finds that Defendants are not in substantial compliance with a provision
1272 or provisions of this Settlement Agreement, it may enter an order consistent with
1273 equitable and legal principles, but not an order of contempt, that is designed to
1274 achieve compliance.
1275
1276 (ECF No. 711-1 at 30). This Court also recognizes the restraints for injunctive relief specifically
1277 enumerated in the Prison Litigation Reform Act ("PLRA"). In that regard, the PLRA provides:

1278 > The court shall not grant or approve any prospective relief unless the court finds
1279 > that such relief is narrowly drawn, extends no further than necessary to correct the
1280 > violation of the Federal right, and is the least intrusive means necessary to correct
1281 > the violation of the Federal right. The court shall give substantial weight to any
1282 > adverse impact on public safety or the operation of a criminal justice system caused
1283 > by the relief.

1284

1285 18 U.S.C. § 3626(a)(1)(A). This Court is also fully aware that "judicial restraint is especially
1286 called for in dealing with the complex and intractable problems of prison administration." *Rogers*
1287 *v. Scurr*, 676 F.2d 1211, 1214 (8th Cir. 1982). Defendants suggest the Seventh Circuit requires
1288 the Court "to order IDOC officials to do so in general terms and to verify that the plan they submit
1289 satisfies the relevant constitutional standards." *See Westefer v. Neal*, 682 F.3d 679, 686 (7th Cir.
1290 2012). In *Westefe*r, the Seventh Circuit reviewed a district court's injunctive order addressing the
1291 IDOC's procedures when assigning inmates to the supermax prison. The district court
1292 incorporated the supermax-transfer regime used in Ohio. In vacating the district court's order, the
1293 Seventh Circuit explained:

1294 > The district court's injunction goes well beyond this, locking in highly specific
1295 > formal requirements controlling the timing and content of the notice and hearing
1296 > that each transferred inmate must receive, and even going so far as to impose a right
1297 > to appeal. An injunction of this scope and specificity is inconsistent with the
1298 > "informal, nonadversary" model set forth in *Wilkinson,*
1299 > *Hewitt,* and *Greenholtz,* and cannot be reconciled with the PLRA's requirement that
1300 > injunctions in prison-conditions cases must be narrowly drawn and use the least
1301 > intrusive means of correcting the violation of the federal right.

1302

1303 *Id*. at 684. Defendants' reliance on *Westefe*r is misplaced for two reasons. First, the record here
1304 demonstrates a long history of the Defendants' non-compliance with various terms they had agreed
1305 upon. Second, given this history of non-compliance, Defendants' proposal is wholly deficient in
1306 addressing their constitutional violations.

1307 The Settlement Agreement was the result of significant negotiations between the Parties
1308 over a period of years. Indeed, in October of 2010, the Parties announced in open court that they

1309 were working toward a class settlement. The Parties worked with a panel of experts to assist in
1310 their settlement efforts. (ECF No. 117, Joint Status Report dated May 7, 2012). A comprehensive
1311 settlement conference was held between April 16, 2013, and April 18, 2013. An Agreed Order
1312 that provided additional working structure resulted from the settlement efforts. (*See* ECF No. 132).
1313 After additional unsuccessful settlement efforts by the Parties, on March 20, 2015, the matter was
1314 set for trial. (Minute Entry dated 3/20/2015; *see also* Minute Entry dated 9/17/2015). On
1315 December 17, 2015, the Parties again announced to the Court that a settlement agreement had been
1316 reached. (Minute Entry dated 12/17/2015). On May 23, 2016, the last signature was acquired on
1317 the Settlement Agreement resolving the decade-long dispute between the Parties. (ECF No. 711-
1318 1 at 33).

1319 Since the agreement was finalized, Defendants have failed to comply with many of its
1320 material terms. (*See e.g.* ECF No. 1373, First Annual Report dated May 22, 2017; ECF No. 1646,
1321 Mid-Year Report dated November 22, 2017; ECF No. 2122, Second Annual Report dated June 8,
1322 2018). While the Monitor has memorialized Defendants' non-compliance, the Defendants
1323 themselves have recognized their deficiencies. During the preliminary injunction hearing, Dr.
1324 Hinton testified that a significant number of mentally ill inmates were in dangerous situations
1325 because there was inadequate staffing at the IDOC. (ECF No. 1758 at 53). The danger associated
1326 with the inadequate staffing applied to every aspect of mental health treatment examined during
1327 the preliminary and permanent injunction hearing. (*See e.g.* ECF No. 1758 at 319-20, Dr. Hinton
1328 acknowledged that it is dangerous to not monitor an individual on psychotropic medication.). In
1329 its Orders, this Court specifically found that the Defendants' efforts to comply with the Settlement
1330 Agreement (or its own general directives) only came at the time of, or after, the filing of the

1331 Plaintiffs' initial Motion. (*See id*., *see also* ECF No. 1559, filed on 10/10/2017). Simply put, the
1332 Defendants' actions have been largely reactionary.

1333 Additionally, based on this Court's review, Defendants' proposal falls far short of
1334 addressing their constitutional violations. The record is clear that the Defendants know what needs
1335 to be done. When presented with yet another opportunity to establish a reasonable proposal to
1336 address their constitutional deficiencies, they instead provided a document containing simple
1337 generalities. (*See* ECF No. 2473-1). The Defendants' most egregious attempt to cure their
1338 constitutional deficiencies is set forth in their proposal regarding mental health staffing.
1339 Defendants propose adopting the vague requirement that they have "a staffing plan and achieve a
1340 level of staffing that provides sufficient number of mental health staff of varying types to provide
1341 class members with adequate and timely evaluations, treatment and follow-up consistent with
1342 contemporary standards of care." (ECF No. 2473-1 at 4). Yet, Defendants know they are
1343 understaffed, and they also know the staffing levels which are necessary to provide adequate care.
1344 In fact, Defendants are fully aware of all these deficiencies, as they have both acknowledged the
1345 staffing problems at the IDOC.

1346 Moreover, the record contains ample evidence to demonstrate the IDOC is understaffed.
1347 (ECF No. 2460 at 13-28). The following exchange at the preliminary injunction hearing puts it
1348 in simplest terms:

1349 Q. You know today you can't deliver the care—the psychiatric care that is required
1350 for the 12,000 patients because you don't have enough psychiatrists?
1351
1352 A. [Dr. Hinton] Correct.
1353
1354 (ECF No. 1758 at 50). For his part, Baldwin testified that the IDOC continues to ask Wexford for
1355 additional staff. (ECF No. 2354 at 9). Despite the Defendants' recognition of their staffing
1356 shortage, not enough is being done. As fully detailed in this Court's Order dated October 30, 2018,

1357 the Defendants' failure to adequately staff their facilities has led to a number of areas where they
1358 have failed to meet the constitutional requirements with respect to the mental health needs of the
1359 inmates.

1360 When there is a "concrete showing of a valid claim and constitutionally mandated
1361 directives for relief," a court should and must act. *Rogers*, 676 F.2d at 1214; s*ee also Hutto v.*
1362 *Finney,* 437 U.S. 678, 687, n. 9 (1978). "A federal court is required to tailor 'the scope of the
1363 remedy' to fit 'the nature and extent of the constitutional violation.'" *Dayton Bd. of Educ. v.*
1364 *Brinkman,* 433 U.S. 406, 420 (1977). Here, it is clear constitutional violations have already
1365 occurred (*see* ECF No. 2460, *ad passim*), and given the general history of Defendants' non-
1366 compliance with the Settlement Agreement, their own directives, and the law, their constitutional
1367 violations will continue unless this Court acts.

1368 **TERMS OF THE INJUNCTION**

1369 The Court FINDS for the reasons stated herein that the following relief is narrowly drawn,
1370 extends no further than necessary to correct the violation of the Federal right, and is the least
1371 intrusive means necessary to correct the violation of the Federal right.

1372 The Defendants John Baldwin, the Acting Director of the IDOC, and Dr. Hinton, the
1373 Department's Chief of Mental Health Services and Addiction Recovery Services must:

1374 ***1. Staffing requirements at the Illinois Department of Corrections***
1375
1376 a. Within 90 days of this order, Defendants must employ the additional staff necessary
1377 to have the following system-wide levels in the following positions: 7 Site Mental
1378 Health Service Directors; 12 Mental Health Unit Directors; sixteen Staff
1379 Psychologists; 142.5 Qualified Mental Health Professionals; 102 Behavioral Health
1380 Technicians; 54.5 Registered Nurses – Mental Health; 24 Staff Assistants; 85.5
1381 Psychiatric Providers; 1 Director of Nursing – Psychiatric; 5 Recreational
1382 Therapists.
1383
1384 i. In order to provide additional clarity on the staffing requirements, the
1385 following describes some of the above positions:

1386
1387 1. Site Mental Health Directors will provide guidance, direction,
1388 training and clinical supervision to all MHPs, except for
1389 psychiatrists within a given facility;
1390 2. Mental Health Unit Directors will function as lead member of a
1391 multidisciplinary team, directing and supervising program
1392 psychologists and mental health staff, and providing clinical
1393 direction, structure and support for the specified unit;
1394 3. Behavioral Health Technicians will assist staff with transporting
1395 offenders to group meetings and therapy appointments, oversees
1396 some groups, leads community meetings, and participates in activity
1397 therapy sessions under the direction of activity therapists. They will
1398 also be involved in additional duties as assigned by licensed MHPs.
1399 BHTs will be Bachelor level, unlicensed, employees.
1400 4. Mental Health Training Coordinators will be responsible for
1401 developing and managing graduate-level students and pre-doctoral
1402 and post-doctoral interns.
1403 5. Qualified Mental Health Professional are Licensed Social Workers,
1404 Licensed Clinical Social Workers, Licensed Professional
1405 Counselors, and Licensed Clinical Professional Counselors; and
1406 6. Psychiatric providers may include the use of mid-level professionals
1407 and medical doctors.
1408
1409 b. Within 120 days of this order, Defendants shall evaluate whether their staffing plan
1410 is sufficient to provide mental health treatment consistent with constitutional law
1411 in the areas of treatment planning, medication management, mental health care on
1412 crisis watches, mental health care in segregation, and mental health evaluations;
1413
1414 c. Within 180 days of this order, Defendants shall report their findings and submit a
1415 proposed amended staffing plan to the Court, the monitor and Plaintiffs' counsel;
1416 and
1417
1418 d. After the report, the Court will consider if any modification to the Defendants'
1419 staffing is necessary.
1420
1421 The Court specifically notes that the record is clear additional staffing is needed to provide
1422 the constitutionally required mental health services at the Illinois Department of Corrections.
1423 Almost universally, every witness who appeared during the hearings, at some point during their
1424 testimony, stated that there was insufficient staff to provide the needed mental health care for
1425 inmates. (*See e.g.* ECF No. 1757 at 139, Dr. Stewart testified about the reason for lack of group
1426 activities; ECF No. 1757 at 197, Dr. Michael Dempsey testified that there were not enough

1427 psychiatrists to treat patients; ECF No. 1758 at 82, Dr. Hinton explained the IDOC did not have
1428 the right staffing requirements; ECF No. 2354 at 71-76, Baldwin acknowledged that the IDOC
1429 needed to work on staffing; ECF No. 2376 at 356, Kelly Ann Renzi, Ph.D., Psychologist
1430 Administrator at Pontiac Correctional Center; ECF No. Dr. Melissa Stromberger, Psychologist
1431 Administrator at Hill Correctional Center; *but see* ECF No. 2373 at 822, Dr. William Elliott,
1432 Wexford Health Sources' Regional Mental Health Director for Illinois, who testified that Wexford
1433 had the right staffing requirements).

1434 The Court recognizes the amount of staff necessary may not ever be identified with exact
1435 precision. Nonetheless, the Court finds that immediate action must be taken by the Defendants to
1436 address the dangerous situation that exists in the correctional facilities. The Court finds the 2014
1437 Remedial Staffing Plan is the valuable piece in analyzing the staffing deficiencies within the
1438 IDOC. Parenthetically, the Defendants have argued that the 2014 Remedial Staffing Plan is not
1439 contained in the record. To the contrary, this document is in evidence. (ECF No. 2362 at 1; ECF
1440 No. 1757 at 19; and ECF No. 1716 at 2, Transcript wherein the document was entered into evidence
1441 without objection). The IDOC found the staffing contained within the document was sufficient to
1442 satisfy its constitutional violations. (ECF No. 1716, Exhibit and Witness List, Ex. 9, IDOC
1443 Proposed Remedial Plan dated April 17, 2014, "Pursuant to its September 20, 2013 Facility and
1444 Staffing Plan, the Illinois Department of Corrections ("Department" or "IDOC") is pleased to
1445 present this proposal for staffing levels and bed and treatment space allocations that satisfy its
1446 constitutional duty to provide mental health care to seriously mentally ill ("SMI") offenders.").
1447 Nonetheless, the Plan was provided by the IDOC as part of its self-review to determine what
1448 needed to be done to "satisfy its constitutional duty to provide mental health care to seriously
1449 mentally ill ("SMI") offenders." (Pl. Ex. 9, p. 1). Couple with the testimony at the hearings

1450 referenced in this Order, this Court is convinced the staffing requirements contained therein are,
1451 at a minimum, necessary to correct the Constitutional deficiencies currently existing in the IDOC.
1452 The Court also recognizes Defendants have increased staffing efforts since the creation of the
1453 document leaving the most recent shortfall at: 8 Mental Health Unit Directors; 2.97 Staff
1454 Psychologists; 27.5 Qualified Mental Health Professionals; 38 Behavioral Health Technicians;
1455 34.5 Registered Nurses – Mental Health; 35.89 Psychiatric Providers. (*See* Df. Ex. 5b). Finally,
1456 the Court has provided the staffing requirements in the aggregate recognizing that the specific
1457 geographical area of need may change, and Defendants must have flexibility to deploy their
1458 staffing resources to the appropriate areas.

1459 The Court recognizes this staffing mandate may not be enough. (*See* ECF No. 2122 at 10,
1460 Second Annual Report of Monitor, Pablo Stewart, MD, "It has become painfully clear to the
1461 monitoring team over the first two years of the Settlement Agreement that the staffing levels of
1462 the Approved Remedial Plan are totally inadequate to meet the mental health and psychiatric needs
1463 of the mentally ill offender population of the Department." *See also* ECF No. 1373 at 35, First
1464 Annual Report of the Monitor Pablo Stewart, MD, "Understaffing is very evident at all but one
1465 IDOC facility monitored and this was identified as a key reason a number of other Settlement
1466 provisions have not been met. Turnover is reported as high."). As such, the Court also directs
1467 Defendants to evaluate whether their current staffing plan meets their constitutional obligation.
1468 This action, in conjunction with the requirement to immediately increase staff, will allow the
1469 Defendants the opportunity to assess their staffing needs while immediately addressing the glaring
1470 staffing deficiencies that currently place the class members in danger.

1471 The Court finds that this directive, based on the evidence, is narrowly drawn, extends no
1472 further than necessary to correct the violation of the Federal right, and is the least intrusive means
1473 necessary to correct the violation of the Federal right.

1474 2. ***Class members who are placed on mental health crisis watch***:
1475
1476 a. Crisis watches should only be used for patients exhibiting behavior dangerous to
1477 self or others as a result of mental illness and may only be ordered upon a finding
1478 by an appropriately trained and licensed mental health professional that no other
1479 less restrictive treatment is appropriate. When used, crisis watches are to be
1480 employed for the shortest duration possible;
1481
1482 b. IDOC shall provide appropriate mental health treatment to stabilize the symptoms
1483 and protect against decompensation;
1484
1485 c. Reevaluations of treatment and medication will occur as needed and mental health
1486 treatment shall be determined and any necessary interventions to stabilize
1487 individuals shall occur;
1488
1489 d. Daily assessment in a confidential setting of the patient's progress to determine if
1490 the patient is moving towards stability, whether other or additional treatments are
1491 indicated, or if transfer to a higher level of care is required;
1492
1493 e. No later than at the time of discharge from crisis watch, an appropriate mental
1494 health professional (with the patient) shall review and update the treatment plan
1495 which will apply after discharge from crisis watch. The updated treatment plan will
1496 address causes which led to the deterioration and the plan for risk management to
1497 prevent relapse;
1498
1499 f. For anyone who does not stabilize sufficiently to be discharged from crisis watch,
1500 the treatment team must establish a plan to provide a higher level of care, which
1501 may include transfer to a higher level of care facility, or explain in writing why
1502 establishing such a plan is not appropriate; and
1503
1504 g. Out of cell time for confidential counseling and groups, psychiatric care,
1505 therapeutic activities, and recreational or leisure activities unless clinically contra-
1506 indicted.
1507
1508 In addition to the reasons outlined in this Court's Order dated October 30, 2018, given the
1509 Defendants' general failure to address their deficiencies in the care of mentally ill inmates on crisis
1510 watch, it is necessary to require the above action. The record demonstrates that crisis watch is

1511 often being used in a manner that is detrimental to the inmates. Inmates are initially screened for
1512 suicidal tendencies but are not always re-accessed thereafter. (ECF No. 1757 at 232; ECF No.
1513 1903 at 198-99, Dr. Stewart testifying that "there's no specialized treatment that occurs for people
1514 in crisis."). As such, Dr. Hinton acknowledged that "the primary focus [of crisis watch] is ensuring
1515 [inmates'] safety, ensuring that [inmates] are okay and getting [them] off of a state of crisis [ ]."
1516 (ECF No. 2371 at 34). Dr. Hinton's own testimony highlights the requirement that crisis watch
1517 should be used for the shortest duration possible.

1518 Dr. Stewart also opined that the Defendants' failure to conduct necessary evaluations and
1519 assessments of inmates who are discharged from crisis watch results in unnecessary harm and
1520 suffering, especially as those failures combine with inadequate treatment planning and
1521 psychopharmacology. (ECF No. 1757 at 231). The Court finds that the directives related to
1522 inmates on crisis watch are narrowly drawn, extend no further than necessary to correct the
1523 violation of the Federal right, and are the least intrusive means necessary to correct the violation
1524 of the Federal right. The Court has fashioned these requirements being mindful to allow as much
1525 operational discretion and flexibility to prison administrators as possible given the record in this
1526 case.

1527 3. ***Class members who are placed in segregation***[5]
1528

[5] Dr. Stewart has explained that inmates in segregation are:

> [S]ome of the sickest individuals psychiatrically that I've seen in my career, and I've only worked with seriously mentally ill. And these people are just suffering immensely.
>
> And so -- you know, and they get nothing. Couple little things thrown at them. But they really don't get any sort of regular treatment.
>
> And so this is a real serious issue, you know. I don't want to put a number on it. It's, it's -- it's as serious as I've seen.

(ECF No. 1905 at 182-83).

1529 a. Promptly after placement into segregation, a mental health professional shall assess
1530 the class member to establish a baseline against which any future decompensation
1531 can be measured. Such review shall be documented in the patient's mental health
1532 records in a manner that facilitates access and review by subsequent treatment staff;
1533
1534 b. A mental health professional shall review and recommend any clinically necessary
1535 modifications to the prisoner's individual treatment plan;
1536
1537 c. Rounds shall be conducted by appropriate mental health staff, which may include
1538 behavioral health technicians;
1539
1540 d. Class members who are in a Control Unit for periods of sixteen days or more shall
1541 receive care that includes, at a minimum:
1542
1543 i. Continuation of their mental health treatment plan with such treatment as
1544 necessary to protect from any decompensation;
1545
1546 ii. Rounds in every section of each Control Unit at least every seven days by
1547 appropriate mental health staff;
1548
1549 iii. Pharmacological treatment (if applicable);
1550
1551 iv. Meeting with MHP or multidisciplinary team meetings to the extent
1552 necessary;
1553
1554 v. MHP or mental health treatment team recommendations to post-segregation
1555 housing; and
1556
1557 vi. Structured and unstructured out of cell time sufficient to protect against
1558 decompensation. Structured out of cell time includes therapeutic,
1559 educational and recreational activities that involve active engagement by
1560 their participants for the duration of the activity.
1561
1562 e. Class members in any Control Unit for periods longer than sixty days shall be
1563 provided with structured and unstructured out of cell time sufficient to protect
1564 against decompensation unless clinically contraindicated. If an inmate refuses out
1565 of cell time, a MHP shall follow-up with the inmate to determine whether or not
1566 there is a risk of further decompensation;
1567
1568 f. Mental health staff shall assess class members in Control Units to determine if a
1569 higher level of care is necessary and if so, to make proper recommendations to
1570 facility authority; and
1571
1572 g. Continued treatment by mental health professional and/or psychiatric provider to
1573 the extent clinically indicated.
1574

1575 In addition to the reasons outlined in the Court's Order dated October 30, 2018, Defendants
1576 themselves have recognized that some of the aforementioned directives are necessary. (*See* ECF
1577 NO. 2473-1 at 3-4). In addition, three critical points were made during the hearings. First, Dr.
1578 Hinton testified that the requirements related to inmates who are in segregation are not being met.
1579 Dr. Hinton also testified that, in his view, "there's nothing that is a good thing about being in
1580 segregation." (ECF No. 1758 at 82). Second, Dr. Stewart testified that the IDOC's medication
1581 management for those in segregation is worse than for Class Members elsewhere in the system.
1582 Dr. Stewart specifically noted there is a significant problem in ensuring those in segregation who
1583 are prescribed psychotropic medication actually take the medication. (ECF No. 1757 at 123). And
1584 third, Dr. Stewart explained the consequences of failing to allow mentally ill inmates out of cell
1585 time as follows:

1586 [ ] psychiatric decompensation. And then we run into that whole line, you know,
1587 acting out, writing up, more segregation time and/or going to crisis, coming out. It's
1588 -- the fact that (vi)(A), which is continuation of the initial treatment plan with
1589 enhanced therapy, if necessary, to protect from decompensation that may be
1590 associated with segregation, that's not being done. People are getting worse in
1591 segregation.
1592
1593 (ECF No. 1905 at 174). Given the testimony at the hearing, the Court finds that its directives
1594 related to inmates in segregation are narrowly drawn, extend no further than necessary to correct
1595 the violation of the Federal right, and are the least intrusive means necessary to correct the violation
1596 of the Federal right. The Court has fashioned the requirements being mindful to allow the most
1597 operational discretion and flexibility to prison administrators as possible given the record in this
1598 case.

1599 4. ***Class members who are prescribed psychotropic medication***
1600
1601 a. Class members who are prescribed psychotropic medication shall be evaluated by
1602 a psychiatric provider at regular intervals consistent with constitutional standards;
1603

1604 b. IDOC shall accomplish the following in psychiatric services:
1605
1606 i. Administer medications to all class members in a manner that provides
1607 reasonable assurance that prescribed psychotropic medications are actually
1608 being delivered to, and taken by, the offenders as prescribed;
1609
1610 ii. The regular charting of medication efficacy and side effects;
1611
1612 iii. Take necessary steps to ascertain side effects;
1613
1614 iv. The timely performance of lab work for these side effects and timely
1615 reporting on results;
1616
1617 v. The class members for whom psychotropic drugs are prescribed receive
1618 timely explanations from appropriate medical staff about what the
1619 medication is expected to do, what alternative treatments are available, and
1620 what in general are the side effects of the medication; and have an
1621 opportunity to ask questions about this information before they begin taking
1622 the medication; and
1623
1624 vi. That class members, including offenders in a Control Unit who experience
1625 medication noncompliance, as defined herein, are visited by an MHP. If,
1626 after discussing the reasons for the offender's medication noncompliance
1627 said noncompliance remains unresolved, the MHP shall refer the offender
1628 to a psychiatric provider.
1629
1630 In addition to the reasons outlined in this Court's Order dated October 30, 2018, the Court
1631 notes that the danger of prescribed psychotropic medications was detailed during the hearings.
1632 Some of the medication used to treat psychiatric conditions have harsh side effects. (ECF No.
1633 1757 at 241). Because of these side effects, monitoring is required. *Id.* One of the biggest
1634 revelations in the hearings was Dr. Stewart's testimony that "[i]t's rare when someone [on
1635 psychiatric medication] is being seen every 30 days [I've] [f]ound examples of people being seen
1636 -- of medications being routinely written for anywhere from two to six months." (ECF No. 1757
1637 at 243). This is a significant problem and one that must be addressed immediately. Given the
1638 testimony at the hearing, the Court finds that the directives related to inmates on psychiatric
1639 medication are narrowly drawn, extend no further than necessary to correct the violation of the

Federal right, and are the least intrusive means necessary to correct the violation of the Federal right.

5. ***Treatment plans***

a. All class members shall have a treatment plan that is individualized and particularized based on the patient's specific needs, including long and short term objectives, updated and reviewed with the collaboration of the patient to the fullest extent possible.

b. Mental health evaluations shall be conducted in a timely manner to ensure that individuals in need of treatment, or re-evaluation of existing treatment, are evaluated without undue delay.

c. Treatment plans shall be reviewed and updated at regular intervals as clinically necessary to assess the progress of the documented treatment goal and update the plan accordingly.

In addition to the reasons outlined in this Court's Order dated October 30, 2018, the Court emphasizes that it found the Defendants failed, in a systemic way, to properly create, update, and monitor the treatment plans. (ECF No. 2460 at 37-38; ECF No. 1905 at 80, Dr. Stewart found that in a majority of medical files he reviewed, the treatment plan used boilerplate language and did "not address the treatment needs of a particular mentally ill offender."). Again, this problem has been caused, in large part, by the Defendants' failure to address its staffing needs. The record is clear that treatment plans and evaluations are critical to the mental health care of inmates. As such, the Court finds that the directives related to treatment plans and evaluations are narrowly drawn, extend no further than necessary to correct the violation of the Federal right, and are the least intrusive means necessary to correct the violation of the Federal right.

6. Compliance Requirements

a. A quarterly report created by IDOC shall certify each facility's compliance with the above requirements.

b. On a regular basis (no less than every 90 days), Defendants shall provide the results of their own quality assurance audit. These results shall include an accompanying

1674 certification of Defendants' CQI Manager of whether compliance has been reached
1675 with Defendants' quality assurance audit requirements.
1676
1677 c. The appointed independent monitor, Dr. Pablo Stewart, will monitor the
1678 Defendants' compliance with this Order consistent with the monitor's existing
1679 duties and functions.
1680
1681 d. Nothing in this Order relieves the Defendants of their obligations under the
1682 Settlement Agreement.
1683
1684 **7. Timing**
1685
1686 The terms of this permanent injunction shall remain in place for a period of two years from
1687 the date of this Order. *See supra* p. 16; *see also e.g.* 711-1 at 30.

1688 **FINAL COMMENTS ON REMEDY**
1689
1690 During the preliminary injunction hearing, Defendants did not generally dispute their
1691 deficiencies in mental health care to inmates. (*See* ECF Nos. 2070, Order dated 5/25/2018, *see*
1692 *also* ECF Nos. 1757, 1758, 1903, 1904, 1905, and 1906, transcripts of preliminary injunction
1693 hearing). During the permanent injunction proceeding, Defendants' evidence was focused on
1694 changes that had occurred between the issuance of this Court's Preliminary Injunction Order and
1695 the permanent injunction hearing. (*See* ECF No. 2460, Order dated 10/30/2018; ECF Nos. 2370,
1696 2371, 2372, 2373, 2374, 2375, 2376, 2377, and 2378, transcripts of the permanent injunction
1697 hearing). However, Defendants also assert they are doing the best they can considering the market
1698 for mental health professionals. These positions are contradictory and problematic. The former
1699 highlights the fact that Defendants fail to act urgently without the Court's intervention. As noted
1700 in this Court's Order dated October 30, 2018, the Defendants have made some strides since the
1701 preliminary injunction hearing. In fact, during the permanent injunction hearing, Baldwin boasted
1702 about new avenues for staffing, including working with universities. Yet, exploring these
1703 opportunities has only recently occurred. The latter is a problem because the Defendants have far

1704 too often relied on their outside vendor for their staffing needs. Baldwin made this point clear

1705 during the hearing when he testified:

1706 Q. And so in January you knew that you were not providing the level of care
1707 desperately needed and to which these people are entitled?
1708
1709 A. We knew we had a problem, and we were working on a broad front to help
1710 address it. And we still are and will continue.
1711
1712 Q. But you can't tell me how it came to be that you had such a terrible problem in
1713 January of 2018 when you had made promises in May of '16 that, if they had been
1714 kept, wouldn't let you be in that situation, right?
1715
1716 A. Yes. We need to do -- we depended on our partner for filling vacancies.
1717
1718 Q. You depended on your partner -- Wexford -- to deliver care that you had
1719 promised? Is that what you're saying?
1720
1721 A. That's part of it. We also trained staff. We also hired our own behavioral
1722 health people in good numbers. And we have made, in my opinion, a reasonable
1723 effort to comply in most areas of the treatment for the mentally ill under our care.
1724

1725 (ECF No. 2354 at 76-77) (emphasis added).

1726 In the end, it was the Defendants' decision to rely on Wexford to solve their problem. As

1727 this Court noted previously, the Defendants cannot shirk their constitutional obligations by

1728 delegating them to another. (ECF No. 2460 at 44). And now the Court must impose the directives

1729 above to avoid the continuance of the constitutional violations.

1730 Parenthetically, several times in their briefs and associated oral arguments, Defendants

1731 have noted that this Court has left the Settlement Agreement in place. While it is true the Court

1732 has found the Settlement Agreement remains, the reason for such is simple - the Parties agreed to

1733 do so. (*See e.g.* 711-1 at 30, "If the Court determines that Defendants are not in substantial

1734 compliance, with any provision of this Settlement Agreement at any time during the three (3) year

1735 period of the Settlement Agreement, the Court's jurisdiction with respect to such provision shall

1736 continue for the remainder of the three (3) year period or for a period to be ordered by the Court

1737 of not more than two (2) years from the date of the Court's finding that Defendants are not in
1738 substantial compliance."). The Parties agreed to litigate certain portions of their dispute if
1739 compliance with the agreement did not occur – and only those portions were litigated. With respect
1740 to those areas, the Court has found Defendants were not in substantial compliance. The
1741 requirements imposed herein are those the Court finds are narrowly drawn, extend no further than
1742 necessary to correct the violation of the Federal right, and are the least intrusive means necessary
1743 to correct the violation of the Federal right.
1744
1745 So ordered, this 22nd day of April 2019.
1746

1747 s/ Michael M. Mihm
1748 Michael M. Mihm
1749 U.S. District Court Judge