SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** **IAS MOTION 47EFM**

Justice

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BRAD H., ROBERT K., MICHAEL R., SUSAN T., KEVIN W.,

Plaintiffs,

- v -

THE CITY OF NEW YORK, HON. BILL DE BLASIO, MAYOR OF NEW YORK CITY, NEW YORK CITY HEALTH AND HOSPITAL CORP., DR. MITCHELL KATZ, PRESIDENT OF THE NEW YORK HEALTH AND HOSPITAL CORP., THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, DR. OXIRIS BARBOT, COMMISSIONER OF THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, NEW YORK CITY DEPARTMENT OF CORRECTION, CYNTHIA BRANN, COMMISSIONER OF THE NEW YORK CITY DEPARTMENT OF CORRECTION, THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, STEVEN BANKS, COMMISSIONER OF THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION,

Defendants.

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INDEX NO. 117882/1999

MOTION DATE 11/24/2020

MOTION SEQ. NO. 023

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 023) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72

were read on this motion for ENFORCEMENT.

This is a class action brought on behalf of incarcerated individuals receiving mental health treatment in the custody of New York City jails. Plaintiffs move to extend the terms of the stipulation of settlement dated January 8, 2003, as amended by stipulation dated June 6, 2017 and entered on June 13, 2017. Defendants The City of New York, NYC Health + Hospitals Corporation/Correctional Health Services, NYC Department of Health and Mental Hygiene, NYC Department of Correction, and New York City Human Resources Administration, and the heads of these agencies in their representative capacities, cross-move for an order directing that,

in the event that plaintiffs' motion is granted, the performance goals used to assess whether defendants provided the required service/benefit prior to the class members' discharge from City custody to the community be reduced and modified. For the reasons set forth below, plaintiffs' motion is granted and defendants' cross motion is denied.

BACKGROUND

This action was filed in 1999 by seven plaintiffs on behalf of a class of similarly situated incarcerated individuals. Plaintiffs sought to compel defendants to provide adequate discharge planning under the New York State Constitution, Mental Hygiene Law § 29.15, and 14 NYCRR 587.1 *et seq*. In other words, plaintiffs sought linkages to community-based mental health treatment, medication, public benefits, and housing so that class members could continue mental health treatment upon release from City jails.

On July 12, 2000, the court granted a preliminary injunction, finding that plaintiffs were likely to succeed on their claims under Mental Hygiene Law § 29.15 and 14 NYCRR 587.1 *et seq.*, and that they would be irreparably harmed without adequate discharge planning (*Brad H. v City of New York*, 185 Misc 2d 420, 431 [Sup Ct, NY County 2000], *affd* 276 AD2d 440 [1st Dept 2000]). In doing so, the court (Braun, J.) noted that:

> "Upon release from Rikers Island, generally inmates are not provided any mental health services, government benefits assistance, housing referrals, or other services, or planning therefor. Rather all that is done for inmates released from Rikers Island is that they are taken by bus to the Queens Plaza subway station between 2:00 and 6:00 AM and given $1.50 plus two subway tokens or a two fare MetroCard. When inmates are released from Court, they are free to leave or return to Rikers Island to pick up any personal belongings that they may have left there"

(*id.* at 423).

On August 8, 2000, the court certified a class consisting of:

> "all inmates (a) who are currently incarcerated or who will be incarcerated in a correctional facility operated by the New York City Department of Correction

> ('City Jail'), (b) whose period of confinement in City Jails lasts 24 hours or longer, and (c) who, during their confinement in City Jails, have received, are receiving, or will receive treatment for a mental illness; *provided, however*, that inmates who are seen by mental health staff on no more than two occasions during their confinement in any City Jails and are assessed on the latter of those occasions as having no need for further treatment in any City Jail or upon their release from any City Jail shall be excluded from the class"

(NY St Cts Elec Filing [NYSCEF] Doc No. 4 at 4-5).

On January 8, 2003, the parties entered into a stipulation of settlement, which was approved by the court after a fairness hearing on April 2, 2003. The court thereafter issued an amended final order and judgment dated April 4, 2003 approving the settlement (NYSCEF Doc No. 10).

Overview of the Settlement Agreement

Pursuant to the settlement agreement, defendants were required to provide discharge planning services, which were defined as the following:

> "(a) an individualized assessment of a person's need for (i) clinically appropriate forms of continuing mental health treatment and supportive services including but not limited to, where clinically appropriate, medication, substance abuse treatment, and case management services, (ii) public benefits, including but not limited to Medicaid, Public Assistance and SNAP [Supplemental Nutrition Assistance Program], (iii) appropriate housing or appropriate shelter if housing cannot be located prior to the individual's release from incarceration in a City Jail, and (iv) transportation to appropriate housing or shelter; and (b) assisting each individual with obtaining the services and resources set forth in (a), in accordance with each individual's need for those services and resources and in accordance with the terms of this Settlement Agreement"

(NYSCEF Doc No. 7, stipulation of settlement ¶ 5).

The settlement agreement provides for the appointment of two compliance monitors charged with monitoring defendants' provision of discharge planning and compliance with the terms of the settlement (*id.* ¶ 108). The monitors are required to submit periodic written reports to the court assessing defendants' compliance with the settlement and the performance goals

established by the monitors, including whether "compliance has been maintained for a substantial period of time" (*id.* ¶ 149).

The settlement agreement provides that "[w]ithin six months after the Implementation Date, the Compliance Monitors, based on their experience in the implementation of the Settlement Agreement, shall establish performance goals to measure compliance with this Settlement Agreement" (*id.* ¶ 140). "Each of these performance goals shall be expressed in terms of a percentage of eligible Class Members or individuals for whom each goal shall be achieved" (*id.* ¶ 141). The settlement agreement states that the performance goals shall be established and shall measure performance in the following categories:

- timely assessment of class members for inclusion in the class;
- appropriate assessment of whether class members are seriously mentally ill;
- completion of clinically appropriate comprehensive treatment plans for class members;
- completion of clinically appropriate discharge plans for class members;
- completion and processing of Medicaid prescreening for class members;
- enrollment in the Medication Grant Program and submission of Medicaid applications;
- activation of class members' Medicaid benefits;
- provision of medications and/or e-prescriptions;
- making appropriate community referrals and/or appointments;
- submission and processing of public assistance and SNAP applications for potentially eligible seriously mental ill class members;
- provision of transportation to seriously mentally ill class members;
- follow-up with seriously mentally ill class members in the areas of housing placement and community referrals or appointments; and
- arranging appropriate housing placements for eligible class members

(*id.* ¶ 142). The monitors are "the final arbiters of the performance goals" (*id.* ¶ 147).

The settlement agreement further provides that:

> "[t]he provisions of this Agreement shall terminate at the end of five years after monitoring by the Compliance Monitors begins pursuant to § IV of this Agreement. Plaintiffs may apply to the Court by motion on notice for a finding that Defendants have not complied with the terms of this Settlement Agreement over the preceding

> two years, and if such finding is made by the Court, for an Order continuing the provisions of this Agreement for an additional two-year interval or intervals to the extent necessary to correct any current and ongoing violation of this Settlement Agreement"

(*id.* ¶ 193).

> "At the end of each such additional two-year interval, Plaintiffs may apply to the Court by motion on notice for a finding that Defendants have not complied with the terms of the Settlement Agreement over the preceding two years, and, if such finding is made by the Court, for an Order continuing the provisions of the Settlement Agreement to the extent necessary to correct any current and ongoing violation of this Settlement Agreement"

(*id.* ¶ 194).

The settlement agreement provides that, prior to filing a motion to enforce, plaintiffs are required to give defendants a reasonable opportunity to cure of not less than 20 days (*id.* ¶ 163).

Enforcement History

Previously, plaintiffs filed a motion seeking to extend the term of the settlement agreement. The Court of Appeals held that plaintiffs' motion was timely filed, since plaintiffs sought relief prior to termination of the settlement agreement (*Brad H. v City of New York*, 17 NY3d 180, 182 [2011]).

By decision and order dated April 15, 2014, the court (Wright, J.), among other things, (1) extended the terms of the settlement agreement for an additional two years, (2) directed defendants to comply with each of the performance goals set by the compliance monitors, (3) directed defendants to comply with each and every one of their obligations under the settlement, and (4) directed defendants to "reorganize the provision of discharge planning services to eliminate the fragmented dichotomy between clinical and discharge planning positions" (NYSCEF Doc No. 8). By decision and order dated September 19, 2014, the court vacated the sixth decretal paragraph of the April 2014 decision and order, and directed defendants "to

reorganize the provision of discharge planning services to ensure that discharge planning staff be an integral part of the mental health treatment team from the beginning, or, in the case of the provision of emergency care, as soon as possible after the beginning, of the assessment of a class member's need for mental health treatment" (NYSCEF Doc No. 11).

The parties subsequently agreed to a three-year extension and renegotiated certain terms of the original stipulation of settlement. On June 18, 2017, the court (Edwards, J.) extended the stipulation of settlement and the court's April 18, 2014 and September 19, 2014 decisions and orders for a period of three years (NYSCEF Doc No. 9).

The Parties' Contentions

Plaintiffs now argue that defendants have failed to provide appropriate discharge planning services over the past two years. Plaintiffs contend that defendants have failed to comply with the "appropriateness" goals, which measure whether defendants are appropriately categorizing class members as seriously mental ill and providing class members with clinically appropriate discharge planning services. Plaintiffs maintain that defendants: (1) failed to meet the compliance goal for assessing class members with serious mental illness for five of six reporting periods since January 2018 (NYSCEF Doc No. 14 at 10, 104; NYSCEF Doc No. 15 at 10, 110; NYSCEF Doc No. 17 at 9, 97; NYSCEF Doc No. 18 at 9, 98; NYSCEF Doc No. 19 at 13, 84); (2) failed to meet the compliance goal for appropriate mental health treatment appointments and referrals (NYSCEF Doc No. 14 at 10, 104; NYSCEF Doc No. 15 at 110; NYSCEF Doc No. 16 at 96; NYSCEF Doc No. 17 at 97; NYSEF Doc No. 18 at 98; NYSCEF Doc No. 19 at 84); (3) failed to meet the compliance goal for providing assistance in obtaining supportive housing (NYSCEF Doc No. 14 at 10, 104; NYSCEF Doc No. 15 at 110; NYSCEF Doc No. 16 at 96; NYSCEF Doc No. 17 at 97; NYSCEF Doc No. 18 at 98; NYSCEF Doc No.

19 at 84); and (4) failed to meet the compliance goal for referrals to case management (NYSCEF Doc No. 14 at 10, 104; NYSCEF Doc No. 15 at 110; NYSCEF Doc No. 16 at 96; NYSCEF Doc No. 17 at 97; NYSCEF Doc No. 18 at 98; NYSCEF Doc No. 19 at 84).

In addition, plaintiffs argue that defendants have failed to achieve compliance at any time with eight performance goals, and/or failed to submit data so that the monitors could determine whether defendants were in compliance. According to plaintiffs, defendants have also failed to comply with twelve performance goals, or failed to report data necessary for the monitors to determine compliance, for at least one reporting period since January 2018.

Finally, plaintiffs contend that defendants have failed to comply with numerous other settlement provisions and the court's April 18, 2014 and September 19, 2014 decisions and orders. Specifically, plaintiffs argue that defendants have failed to implement continuous quality improvement and data quality assurance; failed to report compliance data; failed to integrate discharge planning staff into mental health treatment teams; failed to fully staff discharge positions; failed to provide the monitors with access to electronic medical records; failed to produce class members for jail-based appointments; failed to comply with any performance goals in forensic units; failed to assist in obtaining Social Security and VA benefits; failed to ensure Medicaid benefits; failed to adequately train DOC staff; and failed to ensure daylight release for class members incarcerated on parole violations.

In opposition to plaintiffs' motion and in support of their cross motion, defendants argue that they have acted in good faith, have used their best efforts, and are in substantial compliance with the terms of the settlement. Therefore, defendants contend that the settlement agreement should terminate. According to defendants, plaintiffs' argument that the "appropriateness" measures are the most critical is not supported by the language of the agreement. Moreover,

defendants maintain that the monitors' appropriateness reviews are seriously flawed and are based on their own subjective assessments. Further, defendants argue, plaintiffs mischaracterize or exaggerate defendants' alleged non-compliance. Alternatively, defendants maintain that the settlement agreement should terminate as to those obligations for which there is no current and ongoing violation. Defendants also contend that the performance goals are set too high and should be reduced.

As support for their position, defendants submit an affidavit from Bipin Subedi, M.D. (Subedi), co-chief of Mental Health of Correctional Health Services (CHS), one of the divisions of New York City Health + Hospitals (NYSCEF Doc No. 29, Subedi aff, ¶ 1). Subedi states that many of the performance goals are clinically unrealistic and unrealistically high (*id.*, ¶ 8). Moreover, Subedi states that "the available data demonstrates that when considering service delivery prior to discharge, CHS has achieved an average compliance rate of 96% for all the performance goals established by the Monitors for which CHS is responsible" (*id.*, ¶ 9; *see also* NYSCEF Doc No. 30).

Additionally, defendants provide affidavits from the chief medical officer of CHS, Ross MacDonald, M.D., and Joel Dvoskin, Ph.D., a psychologist, who opine that achieving 95% compliance is unrealistic for "practical limitations on providing Discharge Planning and implementing Discharge Plans in the City Jails" (NYSCEF Doc No. 7, stipulation of settlement ¶ 14) or in light of the possibility of human error (NYSCEF Doc No. 36, MacDonald aff, ¶¶ 24-34; NYSCEF Doc No. 38, Dvoskin aff, ¶ 29).

Defendants also offer an affidavit from Virginia Barber Rioja, Ph.D., another co-chief of Mental Health of CHS, who states that the monitors' appropriateness reviews are vulnerable to subjective interpretations and are, therefore, an inaccurate measure of CHS's compliance with

the settlement (NYSCEF Doc No. 34, Barber Rioja aff, ¶¶ 63-71). She further states that the monitors' appropriateness reviews unfairly penalize CHS for reasons unrelated to clinical quality (*id.*, ¶¶ 72-77).

DISCUSSION

The settlement agreement "must be discerned under several cardinal principles of contractual interpretation" (*Brad H.*, 17 NY3d at 185). "A written agreement that is clear, complete and subject to only one reasonable interpretation must be enforced according to the plain meaning of the language chosen by the contracting parties" (*id.*). "To determine whether a writing is unambiguous, language should not be read in isolation because the contract must be considered as a whole" (*id.*). "Ambiguity in a contract arises when the contract, read as a whole, fails to disclose its purpose and the parties' intent" (*Ellington v EMI Music, Inc.*, 24 NY3d 239, 244 [2014]), or when "the agreement on its face is reasonably susceptible of more than one interpretation" (*Chimart Assoc. v Paul*, 66 NY2d 570, 573 [1986]). "Courts may not, through their interpretation of a contract, add or excise terms or distort the meaning of any particular words or phrases, thereby creating a new contract under the guise of interpreting the parties' own agreements" (*Nomura Home Equity Loan, Inc., Series 2006-FM2 v Nomura Credit & Capital, Inc.*, 30 NY3d 572, 581 [2017]).

The termination provision, upon which plaintiffs have already obtained an extension, states that "Plaintiffs may apply to the Court by motion on notice for a finding that Defendants have not complied with the terms of the Settlement Agreement over the preceding two years . . ." (NYSCEF Doc No. 7, stipulation of settlement ¶ 194). Where plaintiffs make such a showing, the terms of the settlement may be extended "for an additional two-year interval or intervals to

the extent necessary to correct any current and ongoing violation of this Settlement Agreement" (*id.*).

Viewing the settlement agreement as a whole, the clear and unambiguous language of the agreement requires plaintiffs to demonstrate that defendants have not substantially complied with the terms of the agreement over the preceding two years in order to be entitled to an additional extension (*id.* ¶ 160 ["Defendants . . . shall be in substantial compliance with the terms of this Settlement Agreement at all times after the Implementation Date"]). Defendants' contention that "the Settlement terminates of its own accord unless Plaintiffs can demonstrate that Defendants have not used their best faith efforts (i.e. acted in bad faith) to comply with their obligations within the applicable time frames . . ." (NYSCEF Doc No. 46 at 11-12) is without merit. Rather, the settlement agreement directs that defendants shall use their best efforts to comply with applicable time frames set forth in the agreement (*see* NYSCEF Doc No. 7, stipulation of settlement ¶ 9 ["Except as otherwise provided herein, Defendants shall use their best efforts to perform all obligations required pursuant to this Agreement within the applicable time frames set forth in this Agreement"]; *id.* ¶ 41 ["Defendants shall use their best efforts to complete each assessment and provide all Discharge Planning services described in this § II ['Settlement Relief'] during each Class Member's incarceration in a City Jail"]), not use their best efforts to comply with the terms of the settlement agreement.

Plaintiffs have met their burden of establishing that defendants have not substantially complied with the terms of the settlement agreement over the preceding two years. "[T]he touchstone of the substantial compliance inquiry is whether Defendants frustrated the purpose of the consent decree—i.e. its essential requirements" (*Joseph A. by Wolfe v New Mexico Dept. of Human Servs.*, 69 F3d 1081, 1086 [10th Cir 1995], *cert denied* 517 US 1190 [1996]).

The settlement agreement provides that the goals of the settlement were as follows:

> "4. Defendants shall provide Discharge Planning in accordance with the terms of this Agreement.
>
> "5. Discharge Planning shall include (a) an individualized assessment of a person's need for (i) clinically appropriate forms of continuing mental health treatment and supportive services including but not limited to, where clinically appropriate, medication, substance abuse treatment, and case management services, (ii) public benefits, including but not limited to Medicaid, Public Assistance and SNAP, (iii) appropriate housing or appropriate shelter if housing cannot be located prior to the individual's release from incarceration in a City Jail, and (iv) transportation to appropriate housing or shelter; and (b) assisting each individual with obtaining the services and resources set forth in (a), in accordance with each individual's need for those services and resources and in accordance with the terms of this Settlement Agreement"

(NYSCEF Doc No. 7, stipulation of settlement ¶¶ 4, 5).

Additionally, the settlement agreement defines "Discharge Planning" as "the process of formulating and implementing the Discharge Plan" (*id.*, ¶ 1.cc; *see also* ¶ 1.bb ["'Discharge Plan' shall mean the plan describing the manner in which an individual will be able to receive a clinically appropriate level of continuing mental health treatment – as well as assistance in applying for other necessary treatment, services and benefits – immediately upon his or her release from or transfer out of a City Jail"]).

Pursuant to the settlement agreement, the compliance monitors were tasked with "establish[ing] performance goals to measure Defendants' compliance with the Settlement" (*id.* ¶ 140). While acknowledging that defendants' discharge planning services have vastly improved, the compliance monitors' reports for the past two years indicate that defendants have failed to comply with the "appropriateness" goals, including whether defendants made appropriate assessments of class members with serious mental illness, appropriate referrals/appointments for mental health treatment, adequate assistance in obtaining supportive housing, and appropriate referrals to case management (NYSCEF Doc No. 14 at 10, 104; NYSCEF Doc No. 15 at 10, 110;

NYSCEF Doc No. 16 at 9, 96-97; NYSCEF Doc No. 17 at 9, 97-98; NYSCEF Doc No. 18 at 9, 98; NYSCEF Doc No. 19 at 84).[1] Considering the overarching goals of the settlement agreement, defendants' failures to meet the appropriateness goals have a material effect on defendants' overall performance in providing discharge planning services (*see Joseph A. by Wolfe*, 69 F3d at 1086 ["Because the consent decree sets forth specific criteria to be met, those criteria must be respected unless a deviation can be shown not to have a material effect upon the overall performance of the Department in processing and placing children into permanent homes"]; *see also P.J. ex rel. W.J. v CT Bd. of Educ.*, 550 Fed Appx 20, 23 [2d Cir 2013] [consent decree did not require district to demonstrate overall quality of education, since goals were stated quantitatively rather than qualitatively]). Indeed, meeting the appropriateness goals is essential to fulfilling the core purpose of the settlement – ensuring that class members receive individualized, clinically appropriate discharge planning. In addition, there is no dispute that defendants have failed to develop a mechanism for giving the monitors access to electronic medical records, notwithstanding that defendants are required to provide the monitors with access to "all documents and information, including records stored electronically," that are "reasonably necessary, in the judgment of the Compliance Monitors, to determine whether Defendants are complying with" the settlement agreement (*id.* ¶ 120). There is also no dispute that defendants have failed to program their system to account for changes in class members' status over time notwithstanding their obligation under the settlement agreement to maintain a data system that "accurately reflects current information for each Class Member" (NYSCEF Doc

[1] Defendants' evidence does not demonstrate substantial compliance with the terms of the settlement agreement *over the preceding two years*. Subedi's affidavit seeks to establish compliance for the period from August 2017 through July 2019 (NYSCEF Doc No. 29, Subedi aff, ¶ 9).

No. 7, stipulation of settlement ¶ 125). Defendants' failure to provide the monitors with access to class members' records has hindered the monitors' ability to measure defendants' level of compliance with the settlement agreement. Defendants' failure to account for changes in class members status has a material effect upon the overall performance of defendants discharge planning services for class members. Therefore, plaintiffs have met their burden of establishing defendants have not substantially complied with the settlement agreement and are as a consequence entitled to an extension of it.

Defendants argue that they should be released from certain contractual obligations for which there are no "current and ongoing violation[s]." In support of their argument, defendants argue that the parties deliberately borrowed the language "current and ongoing violation" from the Prison Litigation Reform Act, 18 USC § 3626 (a) (1) (a). However, the settlement agreement precludes relying on extrinsic evidence to "explain, construe, contradict or clarify" its terms (NYSCEF Doc No. 7, stipulation of settlement ¶ 203). Indeed, the monitors' reports show current and ongoing noncompliance with the settlement agreement as a whole therefore, plaintiffs are entitled to an extension of the agreement in its entirety.

Defendants also request that any extension be for less than two years. Contrary to defendants' contention, the settlement expressly contemplates two-year intervals. The agreement states that "*[a]t the end of each such additional two-year interval,* Plaintiffs may apply to the Court by motion on notice for a finding that Defendants have not complied with the terms of the Settlement Agreement over the preceding two years and if such finding is made by the Court, for an Order continuing the provisions of this Agreement *for an additional two-year interval or intervals . . .*" (*id.* ¶ 194 [emphasis supplied]). Since the settlement agreement contemplates two-year intervals for extensions, plaintiffs are entitled to an additional two-year extension.

Defendants also seek, in their cross motion, to reduce the 95% threshold for certain performance goals set by the monitors on the grounds that they are unreasonably high and to modify the timelines so that defendants' compliance is measured based on whether services are provided prior to discharge. The settlement agreement provides that:

> "Either Party may contest any action taken or proposed by the Compliance Monitors pursuant to § IV of this Agreement as being beyond the scope of their authority . . . or as being unreasonable. Such challenges shall be raised by the contesting Party promptly after such action is taken or proposed, and the Parties shall confer in good faith to resolve such disputes. Failing such resolution, the contesting party may seek an order from the Court enjoining, prohibiting or limiting such action, and the contesting Party shall bear the burden of production and persuasion on its motion"

(*id.* ¶ 119 [emphasis added]).

In addition, the agreement states that "[t]he performance goals are to be re-evaluated annually until the end of the monitoring period by the Compliance Monitors in light of their experience concerning the implementation of the Settlement Agreement and discussions with the Parties" (*id.* ¶ 146).

Here, contrary to defendants' contention, paragraph 119 is applicable to a dispute concerning the performance goals. Section IV of the settlement agreement governs setting performance goals. Although the settlement agreement states that the compliance monitors are the "final arbiters" of the performance goals, it also provides that the monitors "*shall* consult with the Parties in setting such performance goals" (NYSCEF Doc No. 7, stipulation of settlement ¶ 147 [emphasis added]). As pointed out by plaintiffs, defendants have not conferred with plaintiffs in order to resolve the dispute about the reasonableness of the performance goals (NYSCEF Doc No. 49 at 39). Plaintiffs state that they are willing to engage in negotiations aimed at achieving reasonable modifications to the timing parameters and compliance thresholds (*id.*). Therefore, the monitors and the parties will be directed to confer in good faith to resolve

this dispute. If the parties cannot resolve the dispute, defendants may then seek an order limiting the performance goals set by the compliance monitors, as contemplated by the settlement agreement. Accordingly, defendants' cross motion will be denied.

Finally, the directives in the April 18, 2014 and September 19, 2014 decisions and orders and those agreed to by the parties in the stipulation dated June 6, 2017 and entered on June 13, 2017 will be extended for the additional two-year period.

CONCLUSION

Accordingly, it is

ORDERED that the motion (sequence number 023) of plaintiffs for an order continuing the terms of the stipulation of settlement dated January 8, 2003, as amended by stipulation dated June 6, 2017 and entered on June 13, 2017 is granted; and it is further

ORDERED that the terms of the stipulation of settlement dated January 8, 2003, as amended by stipulation dated June 6, 2017 and entered on June 13, 2017 are extended for a term of two years commencing from the date of this decision and order; and it is further

ORDERED that defendants are directed to comply with each and every one of their obligations under the stipulation of settlement, the court's April 18, 2014 decision and order, and the court's September 19, 2014 decision and order, including providing individualized, appropriate discharge planning and complying with each of the performance goals established by the compliance monitors; and it is further

ORDERED that defendants are directed to implement a robust, transparent quality assurance system capable of identifying, reporting on, and ultimately reducing the error rate in defendants' data reporting; and it is further

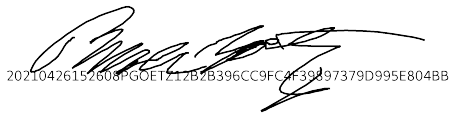
ORDERED that defendants are directed to fully staff all discharge planning positions; and it is further

ORDERED that defendants are directed to provide the compliance monitors with access to class members' electronic mental health records; and it is further

ORDERED that defendants are directed to ensure that discharge planning staff are part of the mental health treatment team in the general population; and it is further

ORDERED that, within 45 days of the date of this decision and order, the parties shall confer in good faith with the compliance monitors concerning reasonable modifications to the timing parameters and performance goal percentages; and it is further

ORDERED that the cross motion of defendants is denied.



4/26/2021
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:		**CASE DISPOSED**		**X**	**NON-FINAL DISPOSITION**		
	X	**GRANTED**	**DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**