DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

UNITED STATES OF AMERICA Plaintiff, v. TERRITORY OF THE VIRGIN ISLANDS, et al. Defendants.	)	Civil No. 86/265

UNITED STATES' MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CIVIL CONTEMPT OF COURT AND REQUEST FOR EXPEDITED BRIEFING

I. PRELIMINARY STATEMENT

Despite nearly thirty years of litigation, multiple enforcement orders, and countless admonitions from this Court, the prisoners and staff at Golden Grove Adult Correctional and Detention Facility ("Golden Grove"), as well as people in the surrounding Virgin Islands community, continue to be at risk of serious harm from Defendants' ongoing failure to comply with court-ordered measures remedying unconstitutional conditions at the facility. In March 2014, the United States filed an enforcement motion asking the Court to order strict deadlines for Defendants to comply with some of the Settlement Agreement's substantive requirements. At that time, there was no comprehensive implementation schedule for the Settlement Agreement. Only when the United States filed its motion did Defendants propose meaningful deadlines via its "work plan," or schedule of deadlines for producing and implementing the policies, procedures, plans, and training that the Settlement Agreement requires. In consideration of this comprehensive work plan and the handful of changes made at the United States' request, the United States withdrew its enforcement motion.

At the April 28, 2014 status conference, the Court accepted these deadlines and encouraged the Territory to move forward in accordance with the plan. Yet, during the three months following that discussion, the Territory either failed to submit anything at all for certain work plan deadlines, submitted material long after the due date, or has submitted materials so patently deficient that the Monitor, Kenneth Ray, rejected them outright. These failures have not been without consequence. There have been numerous incidents threatening the safety of prisoners, staff, and the Virgin Islands community since the work plan went into effect: (1) a prisoner escape and subsequent alleged rape of his prior victim in the community in May 2014; (2) at least three prisoner-on-prisoner stabbings (two in May and one in July of 2014); (3) the attempted escape of five prisoners—caught by the Virgin Islands Police Department, not Golden Grove officials—in June 2014; and (4) a prisoner-on-staff assault during the onsite monitoring visit in June 2014.

The United States engaged the Territory and the Monitor repeatedly to attempt resolution of the Territory's non-compliance without seeking judicial intervention. After many letters, calls, emails, and meetings in which the United States attempted to pin down exact dates by which it could expect the submission of all past-due items, the Territory finally proposed certain new work plan deadlines.[1] However, given the Territory's continuing inability to follow its own deadlines, the United States is not confident that the Territory will adhere to these deadlines without an order from this Court to comply. In fact, the Territory proposed *any* new deadlines for overdue items until after the United States threatened to file this Motion.[2]

[1] Notably, the Territory's proposal fails to include any new deadlines for past due training and implementation work plan items associated with policies that the Monitor rejected wholesale for their patent deficiencies.

[2] *See* Ex. 1, Correspondence between USDOJ, the Territory, and the Monitor (portions redacted subject to protective order), at 32-33, Letter from USDOJ to Nathan Oswald, July 11, 2014 ("Significantly, we still do not know when you plan to deliver all outstanding work plan items. . . .We attempted to clarify via email . . . whether and when we

Judicial intervention is now necessary not only to ensure compliance with the Settlement Agreement, but also to address the ongoing emergent and unconstitutional conditions that continue to place those inside and outside Golden Grove at imminent risk of harm. For these reasons, as explained in detail below, the United States, by and through undersigned counsel, respectfully moves this court for: (1) an order directing Defendants to show cause why they should not be held in contempt of the May 14, 2013 Order Adopting the Parties' Settlement Agreement; (2) an order for Defendants to comply with the new deadlines they proposed for some of the past-due items; (3) an order directing Defendants to propose new deadlines for the remaining past-due work plan items; and (4) an order directing Defendants to discuss the status of compliance with those deadlines in their next status report to the Court, due September 15, 2014.[3]

II. BACKGROUND

The United States comes before the Court yet again seeking an order requiring the Territory to comply with the Settlement Agreement. The implementation schedule, or "work plan," currently governing Defendants' compliance includes deadlines—set by the Territory—for implementing the substantive provisions of the Settlement Agreement. This implementation schedule was put in place after the April 28, 2014 status conference. Despite its ongoing

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should expect to receive dates by which overdue items will be complete. You did not respond to that email. We remain in the dark about when these items will be delivered, despite numerous requests for this information. We cannot continue to wait for a revised schedule – the Court will be notified of this if you do not provide revised dates by Wednesday, July 16, 2014."). *See also* Ex. 1 at 37, Letter from Nathan Oswald to USDOJ, July 18, 2014 (providing a list of dates by which the Bureau of Corrections ("BOC") will complete some past-due items, but noting, "[a] couple more items belong in this list, but BOC needs to confer internally this weekend before it can provide the remaining dates."); *id*. at 42-45, Letter from Nathan Oswald to USDOJ, July 24, 2014 (attaching an Excel spreadsheet containing several newly proposed dates for some additional—though not all—past-due items and noting that "[t]his list does not include deadlines (namely training and implementation dates) associated with policies required under the Settlement Agreement."). To date, USDOJ has not received a complete list of dates from the Territory for submitting all past-due items, despite these and other assurances from the Territory.

[3] On July 11, 2014, Defendants requested to modify the work plan to extend all forthcoming deadlines by 90 days. Although the United States objects to this broad, across-the-board modification request, for the purposes of this motion only, "past-due" items refer to all work plan items due on or before July 11, 2014.

reservations about the "pace of defendants' efforts towards compliance,"[4] the United States accepted these work plan deadlines and, in exchange, withdrew its motion seeking immediate enforcement action.[5] Notably, before allowing the United States to withdraw its motion, the Court questioned counsel for the Territory, and after receiving adequate assurances of the Territory's ability to satisfy the work plan deadlines, the Court accepted "these deadlines as deadlines."[6]

Although the Court recognized that "hiccups" might happen, the Court repeatedly told the Territory that the deadlines are "not simply deadlines on paper with an expectation that the hiccups will happen."[7] Rather, the Court expected—and the Territory did not correct the Court's assumption—that "in putting these deadlines together, the parties, and in particular the Virgin Islands Government, carefully considered what needs to be done in order to achieve the deadlines."[8] In light of the Court's confirmation that the Territory's proposed deadlines in the work plan were well thought out and reflected the logistics necessary to accomplish them, the Court reiterated its "expectation . . . that it will be the exception, rather than the rule, that these deadlines are not met. . . . [I]t will be the rare exception."[9] The United States left the status conference with the understanding that the parties and the Monitor would be implementing the Settlement Agreement pursuant to a work plan containing firm deadlines that the Territory proposed and promised to keep.

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[4] Apr. 28, 2014 Hr'g. Tr. at 7:2–7.
[5] Order Accepting the United States' Withdrawal of its Motion for Enforcement without Prejudice, ECF No. 807. *See also* Apr. 28, 2014 Hr'g. Tr. at 6:3–7 ("Accordingly, the United States is willing to withdraw its motion asking for more specific orders given that the deadlines in the agreement [work plan] comport with what the United States was requesting.").
[6] April 28, 2014 Hr'g. Tr. at 15:16–17.
[7] Hr'g Tr. at 15:18–19.
[8] Hr'g Tr. at 15: 23–16:8. *See also id.* at 15:20–22 (Court expressing its expectation that any "hiccups will be anticipated in advance such that they don't impact the deadlines").
[9] Hr'g Tr. at 17:9–13.

The Territory did not heed the Court's instructions. Beginning in May, work plan deadlines continued to pass with no word from the Territory about compliance or any indication of how it planned to meet the deadlines. Despite the Territory's assurances at the last status conference that it is "committing resources in an aggressive way to getting done what needs to be done,"[10] the Territory has only completed 1 of 50 items due prior to July 11, 2014 under the work plan, and it has failed to request modification of any of these deadlines in advance.

The parties are now three months into the work plan, with significant delays in the production of policies, procedures, and plans necessary to implement the Settlement Agreement. The Territory's continued failure to implement the provisions of the Settlement Agreement jeopardizes the health and safety of prisoners, staff, and community members. Golden Grove remains plagued with violence and security risks. As noted above, since the April 28, 2014 status conference, the following serious incidents occurred: 1) at least three separate prisoner-on-prisoner stabbings, all of which required emergency medical attention; 2) an escape from a housing unit that allegedly resulted in the sexual assault of a member of the community who was previously raped; 3) an attempted escape from a housing unit, where five prisoners were apprehended by Virgin Islands police just before breaching the perimeter gate; and 4) a prisoner-on-staff assault that occurred while the monitoring team was conducting its onsite visit.

These incidents are directly attributable to faulty locks and other inoperable security equipment, inadequate security staffing, and the overall lack of policies and procedures governing Golden Grove. Each of these deficiencies can be remedied if the Territory timely follows the steps outlined in their work plan. These incidents demonstrate how important it is

[10] Hr'g Tr. at 10:23–24.

for the Territory to meet the agreed-upon work plan deadlines and proceed towards compliance with the Settlement Agreement in due haste.

The United States attempted to reach resolution of the Territory's failure to meet its own deadlines via conference calls, in-person meetings, and multiple meet and confer letters and email exchanges. After nearly two months of such efforts, the United States finally received concrete deadlines for when most past-due items will be submitted for approval and when the Territory will revise and resubmit rejected items.[11] Given that the Territory did not follow its own deadlines in the entire first three months they were in place, there is no evidence that the Territory will comply with these deadlines absent specific Court orders.[12] Instead, the Territory continues to repeat its decades-long pattern of waiting until the eve of possible court intervention to produce a partial measure. This pattern cannot continue any longer, especially when lives are irrevocably damaged from the imminent harms existing at Golden Grove.

III. LEGAL STANDARD

It is well-established that a court has the "inherent power to enforce compliance with [its] lawful orders through civil contempt." *Cooper v. Aaron*, 358 U.S. 1 (1958). *See also Shillitani v. United States*, 384 U.S. 364, 370 (1966); *Carty v. Schneider*, 986 F. Supp. 933, 939 (D. VI. 1997). While the elements of a consent decree resemble both a contract and a judicial act, the decree is considered a lawful court order for the purposes of contempt. *Local 93, Int'l Ass'n of Firefighters v. Cleveland*, 478 U.S. 501, 519 (1986) (stating that consent decrees have attributes both of contracts and of judicial decrees, a dual character resulting in different treatment for

[11] After a final conference call on this issue, when the United States expressed its intent to file a contempt motion, the Territory indicated that it would resubmit policies and procedures that the Monitor previously rejected for patent deficiencies one week after the conclusion of the Monitor's planned September 2014 Technical Assistance visit, or by September 19, 2014.

[12] *See* Hr'g Tr. at 8:4–5 (noting that, although the work plan sufficiently outlined the work going forward, the United States had "concerns regarding [the Territory's] ability to meet the deadlines").

different purposes); *Harris v. City of Philadelphia*, 47 F.3d 1311, 1331 (3d Cir. 1995) (asserting contempt is an appropriate enforcement mechanism for jurisdictions subject to consent decrees).

To hold a party in civil contempt for violating a court order, a court must find that: 1) a valid court order existed; 2) defendants had knowledge of the order; and 3) defendants disobeyed the order. *F.T.C. v. Lane Labs-USA*, 624 F.3d 575, 582 (3d Cir. 2010); *Marshak v. Treadwell*, 595 F.3d 478, 485 (3d Cir. 2009); *Roe v. Operation Rescue*, 919 F.3d 857, 871 (3d Cir. 1990). The movant must prove the violation by presenting clear and convincing evidence, with any ambiguities construed in the favor of the non-moving party. *John T. v. Del. Cnty. Intermediate Unit*, 318 F.3d 545, 552 (3d Cir. 2003). The moving party is not required to prove that the alleged contemnor acted willfully or in bad faith in its disobedience, as "good faith is not a defense to civil contempt." *Robin Woods Inc. v. Woods*, 28 F.3d 396, 399 (3d Cir. 1994).

IV. ARGUMENT

A. The United States Has Exhausted Meet and Confer Efforts

At the outset, the United States wishes to ensure the Court that it made all reasonable efforts to resolve this matter through the Monitor before seeking this Court's intervention. The United States is mindful of the Court's instructions that the United States "look to see what is the most appropriate, most expeditious, most economical, most effective way to achieve what needs to be achieved" under the Settlement Agreement before seeking Court intervention.[13] Accordingly, as outlined below, during the last two months the United States wrote letters, requested and participated in conference calls, sent emails, and otherwise attempted to communicate with the Territory regarding the United States' concerns about missed deadlines and reasonable replacement deadlines.

[13] Hr'g Tr. at 20:13–16.

After all of these efforts, the Territory finally produced a list of dates by which most of the past due items will be developed or revised and re-submitted. The fact that the Territory finally—after three months of effort—submitted a new schedule of dates does not absolve them of the fact that they are in contempt of the Settlement Agreement. Moreover, the schedule presented to the Court in April is now an inaccurate reflection of the Territory's progress towards compliance. Accordingly, the United States seeks a finding of contempt and urges the Court to order the Territory's newly-proposed deadlines for past-due items, to better ensure the Territory actually meets these deadlines.

B. The Territory is Non-Compliant With Its Own Deadlines

The Territory has failed to comply with the vast majority of the work plan deadlines (for items due prior to the filing of this Motion), and this failure puts Defendants in contempt of the Settlement Agreement. Notably, these are deadlines that the Territory set for itself.[14] Both the Court and the United States presumed that the deadlines contained in the Territory's work plan were the product of careful thought and planning.[15] Unfortunately, numerous communications with the Territory since April have confirmed that this was not the case.[16]

The Territory developed a work plan that includes two different categories of deadlines. The first category includes work plan items that require the submission of draft policies, plans, or

[14] Hr'g Tr. at 10:6–9 (noting that the Monitor modified some of the deadlines in the work plan, "but in large part the plan that he adopted is the plan that the defendants submitted").
[15] *See* Hr'g Tr. at 15:23–16:5 ("My assumption – and if that is incorrect, then somebody needs to stand up and tell me – my assumption is that in putting these deadlines together, the parties, and in particular the Virgin Islands Government, carefully considered what needs to be done in order to achieve the deadlines.").
[16] During the June 2014 onsite monitoring tour, the Territory confirmed that it rushed to put many of the dates into the work plan because of the United States' pending enforcement motion without considering all of the logistics required to accomplish each item. Subsequent meetings with staff revealed that none of the staff leadership, let alone individual staff members, even knew about the work plan and were not consulted at all in its development. This violates the Court's instruction at the April 28th status conference that the Territory loop in all necessary agencies, officials, and staff to accomplish the work plan items. *See* Hr'g Tr. at 24:18–25:13 ("I know that there are different agencies that the Bureau of Corrections has to deal with . . . whether its contractors, or employees, et cetera. I encourage you to make sure, first of all, that those agencies are brought into the loop as soon as possible.").

other paperwork to the Monitor and the United States.[17] These items include a date in the "Target Date Draft to DOJ/Monitor Comments" column of the work plan.[18] The second category of deadlines is for work plan items that do not require submission of a draft. Thus, these items do not list a "Target Date Draft to DOJ/Monitor Comments" date; they only include "implementation" dates, listed in the "Target Implementation Date" column of the work plan.[19] As the Monitor has explained and the parties have agreed, although these implementation-only items do not require the submission of a draft, they still require submission of documentation, in some form, demonstrating that the work plan item is complete.[20]

Prior to July 11, 2014, the Work Plan required the Territory to meet at least 50 different provisions. The Territory also voluntarily produced two items intended to satisfy later deadlines (IV.F #6 and V #27), meaning the completeness of 52 items was at stake by July 11, 2014. Thirty of those items required submission of a draft document to the Monitor and the United States. The remaining twenty-two items required production of documentation sufficient to show that the item was complete. In both categories, the Territory entirely failed to meet certain deadlines, and for most deadlines that they met in form, they did not meet in substance.

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[17] For these provisions, there is also a later deadline by which the policy must be fully implemented. Under the Settlement Agreement, a policy is "implemented" when it has been drafted and disseminated to all staff responsible for following or applying the policy; when all staff have been trained on the policy; compliance with the policy is monitored and audited; the policy is consistently applied; and corrective actions are taken when lapses in the application of the policy occur. ECF No. 689-1 at 2.

[18] *See* ECF No. 818.

[19] *Id.*

[20] For example, during the June 2014 onsite monitoring tour, the Monitor outlined the following types of documentation that the Territory should submit to demonstrate compliance with stand-alone training requirements, such as the training required in work plan item V # 21:

(1) documentation showing how many people were trained (including numbers and percentages of staff);
(2) documentation containing the subject matter of the training;
(3) information on the instructor's identity and qualifications;
(4) documentation showing how the training requirement was met (demonstration of staff proficiency, e.g., through pre and post tests); and
(5) course materials.

Category 1: Work Plan Items Requiring Draft Submissions

Of the thirty provisions requiring submission of a draft document, the Territory satisfactorily completed only one: Work Plan Item IV.D #1, which required the Territory to "complete a comprehensive staffing analysis using the National Institute of Corrections process as a guideline." This staffing analysis was due on May 31, 2014; it was submitted on July 21, 2014. For seven of the provisions in this category, the Territory submitted nothing. These items include IV.A #27, IV.B #8, IV.D #4,[21] and V #4-7.

The Territory submitted documents intended to satisfy twenty-two of the remaining twenty-nine provisions requiring production of a draft document. However, the Monitor rejected each of these drafts for failing to meet basic requirements. Some of these documents were impossible to comprehend due to formatting and spelling errors. Others lacked important definitions; failed to include all the relevant provisions from the Settlement Agreement; were internally inconsistent; and lacked organizational structure. The Monitor rejected all of the submitted policies via email on June 13, 2014, stating that "none of the policies/procedures submitted for approval contain all basic elements I previously email[ed] about."[22]

The United States made several attempts to work with the Territory to develop a schedule of dates by which revised draft policies would be submitted for approval: *first*, via a conference call on June 5, 2014; and *second*, during an on-site meeting with the Warden, the Director, and the policy development consultant for the Territory; and *finally* through a series of letters, each asking the Territory to "provide (1) a schedule of dates by which it will submit revised draft policies reflecting the Monitor's guidance and our own comments; and (2) an explanation of the

[21] The Territory indicated via email that item IV.D #4 would be delayed pending completion of the staffing analysis, originally due on May 31, 2014. The Territory never followed up to provide an exact date by which this item would be complete. Finally, on July 24, 2014, the Territory stated it would complete this item by September 16, 2014.
[22] Ex. 1 at 24, Email from Kenneth Ray to Nathan Oswald, June 13, 2014.

process the Territory will be using to revise existing policies or write new ones, where necessary."[23] Each time, the Territory told the United States that it would respond with its plan shortly.

Finally, on July 7, 2014, more than a month after the United States attempted to resolve this issue, the Territory responded via counsel by describing a new process for policy development that would utilize small groups of key personnel, working collaboratively with consultants reportedly hired by the Territory.[24] The Territory provided a schedule of when those meetings would take place, and noted that once the consultants "incorporate the product" of the meetings into the policies, the Bureau of Corrections ("BOC") would conduct a review within three working days.[25] The United States sent a follow-up letter, noting that despite its hope that the new process would lead to improved drafts, the Territory still failed to offer a schedule for when the new drafts would be produced.[26] Although the Territory's July 7th letter attached a list of policy review committee meeting dates, it remained unclear how long the policy consultants would take to incorporate information obtained during those meetings, create a new draft, submit that draft for BOC approval, and finally submit the new draft to the United States and the Monitor. The United States offered the Territory one final opportunity to identify dates certain by which it would produce new policy drafts, requesting a response by July 16, 2014. The Territory replied on July 18, 2014, changing the policy development plan so that the Monitor would come on site to help rewrite the policies. Instead of providing dates certain for resubmitting the new draft policies, this correspondence further stated that it "makes sense to

[23] *See* Ex. 1 at 26, Letter from USDOJ to Nathan Oswald, June 30, 2014.
[24] *See* Ex. 1 at 29, Letter from Nathan Oswald to USDOJ, July 7, 2014.
[25] *Id.*
[26] *See* Ex. 1 at 32, Letter from USDOJ to Nathan Oswald, July 11, 2014.

discuss" the timeline for producing new drafts "after the Monitor's visit."[27] After multiple attempts to finalize a schedule for policy revisions, the United States was told to wait and "discuss this issue again after the Monitor" arrives on site to help the Territory rewrite its policies, a visit that will not occur until September.[28] After the United States indicated its intent to file this enforcement motion during a final conference call on this issue with the Territory and the Monitor on July 22, 2014, the Territory sent an email the next morning stating that it can now commit to submitting all revised policies and procedures within a week after the Monitor's technical assistance visit, or by September 19, 2014.[29]

The Territory also argued that certain policies already submitted (and rejected) covered multiple work plan provisions. Although there is certainly some overlap among work plan items, the Territory can only satisfy a work plan item if the document submitted actually applies to that work plan item. On more than one occasion, the Territory stated that work plan item X was satisfied by previously submitted policy Y, but policy Y was either wholly irrelevant or incomplete with regards to X. For example, work plan item IV.A #22 requires the Territory to "create a plan to ensure special needs prisoners are monitored more frequently and by qualified health care staff." This item was due on June 1, 2014. The Territory sent an email on June 6, 2014 submitting the Territory's "SMU and Segregation Policy," and stating that this policy "satisfies IV-A #22." That policy, however, did not define "special needs prisoners," nor did it contain any plan ensuring more frequent monitoring of that population by mental health staff. Instead, the policy covered disciplinary and administrative segregation housing units. When this issue was raised with the Territory, it did not submit any additional information or an actual plan;

[27] Ex. 1 at 36, Letter from Nathan Oswald to USDOJ, July 18, 2014.
[28] *Id.*
[29] *See* Ex. 1 at 41, Email from Nathan Oswald to USDOJ, July 23, 2014.

instead, the Territory indicated that the policy regarding segregation would be revised in the coming weeks.[30] Accordingly, Item IV.A # 22 is overdue.[31]

This open-ended and constantly shifting schedule is precisely what the work plan deadlines were designed to prevent. The United States does not object to the Monitor helping the Territory rewrite their policies.[32] Yet this could have—and should have—happened months before, and this process should have been built into the deadlines the Territory submitted to the Court last April.[33] It was not. Rather than reflecting the logistics necessary to complete the work plan items, the deadlines appear to have been pulled out of thin air, with the result that deadlines are consistently missed or blatantly deficient drafts are produced—leading to no progress under the Settlement Agreement. This is precisely the type of foot dragging that has plagued this case for years. Given how long it took to get the work plan in place, and the Territory's failure to abide by its own deadlines, the United States requests that the Court now

[30] *See* Ex. 1 at 29-30, Letter from Nathan Oswald to USDOJ, July 7, 2014.

[31] Notably, the United States used Item IV.A #22 as one example of many where the Territory submitted a document in satisfaction of a work plan item, but the document was not actually sufficient to satisfy that item. The United States clearly noted in its June 30, 2014 letter: "To date, we have not received a single plan or schedule required under the work plan." *See* Ex. 1 at 26, *id.*

[32] During the July 22, 2014 conference call, the Monitor explained that he would arrange a week-long site visit in September 2014, during which he and another corrections expert appointed to his monitoring team, would meet with key Golden Grove personnel and completely redraft all previously rejected policies. In light of this, the United States asked for the Territory's assurance that the policies would be revised and resubmitted for approval within a week of the Monitor's visit. The Territory would not commit to this or any date by which the policies would be resubmitted during the conference call. The United States indicated at the conclusion of the call its intent to file an enforcement motion on this basis, among others. The Territory subsequently emailed to state that it could now commit to submitting revised policies in accord with the United States' proposal.

[33] The Monitor had offered to provide this hands-on technical assistance on numerous occasions, including during the June 2014 onsite monitoring tour, yet the Territory did not accept this offer until now. Indeed, during the April 2014 status conference, the Monitor explained how he had already provided some technical assistance to the Territory by way of "[s]amples, lists . . . a plethora of information, references, materials, professional references, . . . [and] descriptions of what's missing in [the Territory's] own policies" to assist in policy development. Hr'g Tr. at 113:11–14. *See also id.* at 109 (where Mr. Ray explained his concerns with the Territory's policy development and foreshadowing that, despite his provision of models and samples, the Territory would still submit drafts so devoid of "basic elements" that he "ship[s] them back. . . . [A]nd before we know it we're right back in front of [the Court] because . . . they've missed deadlines").

order the specific deadlines by which the Territory must produce items that are already long overdue.

Category 2: Work Plan Items Requiring Verification of Implementation

In addition to the overdue work plan items that require production of draft documents, the Territory has either failed to produce documentation, or produced insufficient documentation, to show that certain "implementation" dates were met.

The Territory did not produce *any* verification documentation for twelve of the twenty-two items in this category.[34] For the remaining items requiring verification of implementation, either the Territory submitted insufficient documentation or further analysis determined that implementation did not, in fact, occur as stated by Defendants.

For four items – items IV.A #17, IV.A #26, IV.D #6, and IV.F #5 – the Territory submitted some documentation, but the documentation was outdated, irrelevant, or insufficient to satisfy the work plan item.[35] A single document, entitled "Plan to Ensure Safety at Golden Grove," was submitted for both IV.A #17 and IV.A #26. This "plan" appears to derive from notes from a meeting, or follow-up notes written by the Warden, reminding management-level staff of certain responsibilities. Item IV.A #17 required the Territory to develop a "plan to ensure supervisors/management follow through on log book reviews to ensure all personnel are appropriately informed of GGACF activities and that issues are handled in an efficient and timely manner."[36] The submitted "Plan to Ensure Safety" included a note that certain staff should review and initial log books, but it did not provide any additional detail, nor did it give

[34] *See* Ex. 2, Chart Outlining Status of Work Plan Completion. The United States completed this document to demonstrate for the Court which work plan items that have not been submitted, are incomplete, or whose completion is in dispute.
[35] *See id.*
[36] ECF No. 818 at 4.

direction to all supervisory-level staff on what to do with the information gleaned from the log book entries. Item IV.A #26 requires the development of a "schedule to ensure all staff have basic issued equipment within the scope of the GGACF P&Ps and ensure the equipment is maintained on the equipment inventory check out forms."[37] The "Plan to Ensure Safety" does not mention anything about equipment checks or equipment inventory forms, much less provide a schedule for ensuring such equipment is provided and maintained. When asked to provide a new date by which IV.A #17 and IV.A #26 would be produced, Defendants argued (despite the United States' earlier letter stating that not a single satisfactory plan or schedule had been produced to date), that these items were already completed via the "Plan to Ensure Safety," or, in the alternative, were not required under the Settlement Agreement.[38]

Similarly, the Territory submitted equally insufficient documentation showing that Item IV.F #5 was complete. Item IV.F #5 required the Territory to review post staffing needs and ensure that scheduling reflects requirements within current staffing availability. This showing was due on June 11, 2014. On June 30, 2014, the Territory submitted overtime rosters for three shifts and stated that the rosters satisfied this work plan item. The United States agrees with the Monitor that this is not sufficient to demonstrate a meaningful review of needs and optimal deployment.[39]

Finally, in satisfaction of item IV.D #6, which requires analysis of staffing deficiencies and revising staffing to address gaps, the Territory submitted an outdated "Critical Hiring Plan," which was previously provided in December 2013. This hiring plan, created before the work plan was in place, could not possibly satisfy the work plan provision, which mandates a new

[37] ECF No. 818 at 6.
[38] *See* Ex. 1 at 58, Email from Nathan Oswald to USDOJ, August 8, 2014.
[39] *See* Ex. 1 at 60, Email from Kenneth Ray to Nathan Oswald, August 10, 2014 (stating that he cannot accept these documents as evidence of compliance with work plan item IV.F #5).

review of staffing deficiencies. Defendants agreed to redo this plan based on their staffing analysis after the Monitor brought this issue to their attention.

For three other items, the United States received an email that the item was complete; but observation during the June onsite monitoring visit disproved this assertion. These items include IV.A #13, IV.A #19, and IV.A #20.[40]

Finally, for all other items, the United States received an email indicating that each item was complete, but with no verifying documentation. These items include IV.B #5, IV.B #7, and V #21.[41] The Territory's failure to complete provision V #21 (requiring the Territory to train correctional officers on how to identify, refer, and supervise prisoners with medical and mental health needs) is particularly troubling. This item was to be completed by June 1, 2014. The

[40] *See* Ex. 1 at 26, 30. Work plan item IV.A #13 mandates a review of all posts to ensure each post has a manual, including post orders. Counsel for the Territory indicated that the Warden conducted rounds and could confirm this item was met. However, a week after receiving that verification, the Monitor toured the facility and observed some posts without any manuals or post orders. Item IV.A #19 requires the Territory to replace or repair any malfunctioning radios. Counsel indicated that this item was complete, but again, the Monitor observed some staff with malfunctioning radios and other posts without any radio present. Finally, IV.A #20 requires repair and replacement of telephone equipment. On June 11, 2014, Counsel indicated that this item was complete. When it became clear during the Monitor's tour that many phones were inoperable (and one physically broken), Counsel retracted his earlier statement. In a subsequent letter, Counsel stated

> *. . . the contractor installing the fiber optics at Golden Grove has requested an extension of his contract to the end of September. By the end of September, the fiber optics and the new phones will be installed. As I indicated in my letter of July 7, none of the current phones will operate on the fiber optics backbone and none of the new phones will operate on the current infrastructure. Therefore it would be inefficient to replace phones now given how soon they will be removed.*

Id. at 37, Letter from Nathan Oswald to USDOJ, July 18, 2014. The United States does not understand why the Territory originally committed to complete item IV.A #20 by June 1, 2014 if the phones would not work until the new fiber optic system was completed. Moreover, the Territory is now providing only an estimate – sometime in September -- of when this critically important communication system will be up and running. This is even more troublesome given the fact that the fiber optic project was originally slated to finish in April. The United States is unsure whether the September completion date will hold.

[41] The Territory's claims that it submitted certain forms to satisfy IV.B #5 and IV.B #7, but after a conference call regarding the Territory's failure to provide adequate documentation in general, the Territory stated that it had no other documents to verify that these items were complete. And, as with items IV. A #17 and IV.A #26 discussed above, the Territory later argued that its failure to complete items IV.B #5 and IV.B #7 is of no consequence because these items are not required under the Settlement Agreement.

Territory's counsel notified the United States on June 11, 2014, that, as per BOC Director Julius Wilson, all officers received this training. The United States asked for verification of that training, in the form of a curriculum, sign-in sheets, or other materials. The Territory would not provide that verification. During the June 2014 onsite monitoring visit, the United States once again asked for verification that the training required by work plan item V #21 occurred. During discussions with Territory officials, it became clear that the training never happened and that there was no clear plan for providing that training in the future. As a result, the Territory eventually retracted its earlier email confirmation that the item was complete. The Territory now represents that "Warden Redwood expects to complete the training within ten days following July 21" and that it "looks like Warden Redwood expects to complete the training by August 1st."[42]

The United States is greatly concerned that this item remains overdue. This limited, emergency training was requested because numerous log book entries indicated that prisoners with serious medical and mental health needs were left unattended and untreated for long periods of time. The United States specifically requested this emergency training in its March 2014 enforcement motion, but agreed to withdraw that aspect of the motion on the Territory's assurance that it would provide the requested training no later than June 1, 2014. Despite the Director's assurance that the training was already complete, the Territory did not—and still has not—provided this required training, while prisoners with serious medical and mental health needs continue to languish at Golden Grove.

[42] Ex. 1 at 36-37, Letter from Nathan Oswald to USDOJ, July 18, 2014.

C. The Territory Should Be Held in Contempt for its Failure to Meet These Deadlines

Under Third Circuit law, a finding of civil contempt is appropriate when: 1) a valid court order exists; 2) the defendants had knowledge of that order; and 3) the defendants disobeyed that order. *Lane Labs-USA*, 624 F.3d at 575. The Territory's actions over the last three months clearly satisfy each of these elements.

It is indisputable that a valid court order exists and that the Territory had knowledge of that order. The Court accepted and entered the Settlement Agreement as an order of this Court on May 14, 2013.[43] This court-ordered Settlement Agreement requires the Territory to "develop and submit to USDOJ and the Monitor for review and approval facility-specific polices" to remedy numerous ongoing constitutional deficiencies at Golden Grove.[44] The agreement also requires the Territory to "take necessary steps to train staff so that they understand and implement the policies and procedures required by this Agreement, which are designed to provide constitutional conditions."[45] To accomplish this goal, the court-ordered agreement requires the Territory to create and follow "a schedule for policy development, training, and implementation of the substantive terms of this agreement."[46] Thus, the implementation schedule codified in the Territory's work plan is a requirement of this Court's order, and the substantive provisions of that plan are drawn from the requirements of the Settlement Agreement itself.

[43] ECF No. 724.
[44] *See generally* ECF 689-1.
[45] *Id.* at 13.
[46] *Id.* Per the deference embodied in the court-ordered agreement, the Territory itself created the vast majority of the deadlines contained in the work plan. Any changes to the work plan on the eve of the April 28, 2014 status conference were limited and agreed to by the Territory.

The Court made this clear during the April 28, 2014 status conference, emphasizing that the work plan deadlines "are the deadlines that will be in the Court's . . . frame of reference with respect to how progress is being made or to be made" under the Agreement.[47] The Court also stated that "it will be the exception, rather than the rule, that these deadlines are not met. . . . And I trust it will be the rare exception."[48] The Territory was therefore on full notice that these deadlines were requirements of the Court in implementing the court-ordered Settlement Agreement. Accordingly, the first and second elements of contempt are indisputably satisfied.

It is equally clear that the Territory has disobeyed these deadlines. As noted above, for some items, absolutely nothing was submitted. When documents were submitted, they were woefully inadequate, incomplete, or unresponsive. Notably, the Territory did not ask for a modification under Section IX.2 of the Settlement Agreement before these deadlines passed. The Territory simply failed to meet these deadlines, by delivering absolutely nothing or by delivering a completely inadequate product. Accordingly, a finding of contempt is appropriate.

D. The Territory's Excuses for Failing to Comply with the Work Plan Deadlines Are Unpersuasive

In response to the United States' and the Monitor's multiple inquiries about past due items, the Territory has vacillated between a handful of different excuses, including but not limited to: 1) the resignation of the former Warden of GGACF in May; 2) administrative problems including delays associated with the contract with the policy development consultant; and 3) other unidentified "unexpected events."[49]

None of these excuses deserve merit, especially because they were offered *after* deadlines had already passed. During the April 28, 2014 status conference, the Court warned the Territory

[47] Hr'g Tr. at 16:16–18.
[48] Hr'g Tr. at 17:9–13.
[49] *See* Ex. 1 at 6, 16, 30-31.

that such excuses would be unacceptable: "My expectation certainly isn't that . . . we're going to turn around and have a schedule, and by two weeks from now we have a different schedule, and three weeks from now we have a different schedule after that."[50] Rather, the Court instructed the parties that any modifications to the schedule must be for good cause and anticipated in advance of the deadline.[51] In many instances, absolutely no justification was put forth for missing a deadline, and the Territory did not acknowledge that certain items were past due until the United States raised the issue on a conference call.

E. In Addition to a Finding of Contempt, the Court Should Order New Deadlines, Including Those Proposed by the Territory, for All Incomplete or Outstanding Work Plan Items

After nearly two months of attempting to secure deadlines for overdue items and a schedule for resubmission of draft policies and procedures previously rejected by the Monitor, the United States believes the Court should order new deadlines that will put the work plan back on track. Unfortunately, the Territory has demonstrated that it will not follow the deadlines it sets for itself; Court-ordered deadlines are therefore necessary to prevent these delays from occurring yet again.

New Deadlines Provided by the Territory

The Territory recently proposed new deadlines for seventeen overdue items. These items, including their original due date, are stated below:

	Work Plan Item#	Work Plan Deadline	VI's Proposed New Due Date
1.	IV-A #11	6/15/2014	9/4/2014
2.	IV-A #12	6/15/2014	9/1/2014
3.	IV-A #14	6/14/2014	8/29/2014

[50] Hr'g Tr. at 27:20–25.
[51] *See* Hr'g Tr. at 26:8–11 ("Do not wait until the last minute at status, and say we needed to have two months on that, because you, you name the agency, well, we didn't get it in time.").

	Work Plan Item#	Work Plan Deadline	VI's Proposed New Due Date
4.	IV-A #15	6/14/2014	9/30/2014
5.	IV-A #16	6/30/2014	10/1/2014
6.	IV-A #20	6/1/2014	9/30/2014[52]
7.	IV-A #25	7/1/2014	8/29/2014
8.	IV-A #27	6/15/2014	10/15/2014
9.	IV-C #7	7/1/2014	9/1/2014
10.	IV-D #4	6/15/2014	9/16/2014
11.	IV-D #6	6/11/2014	9/18/2014[53]
12.	IV-F #10	6/30/2014	8/29/2014
13.	IV-G #2	7/1/2014	10/1/2014
14.	V #5	7/1/2014	9/12/2014
15.	V #6	7/1/2014	9/12/2014
16.	V #21	6/1/2014	8/31/2014[54]
17.	V #32	6/15/2014	9/15/2014

The Territory also agreed to submit revised versions of all the previously rejected policies and other draft documents not listed in the above chart by September 19, 2014. This new date will influence the training and implementation dates in the work plan for those items, and the Territory should provide such dates to ensure a complete, up-to-date work plan.

Items Past Due for which the Territory Did Not Provide New Deadlines

For five items, the Territory has not proposed any new dates by which the items will be complete.[55] These items include IV.A #17 (originally due 6/1/14); IV.A #26 (originally due

[52] The Territory communicated via email that the fiber optic installation project would be complete by the end of September, and the phones would be functional at that time. *See* footnote 40, *supra*. The United States takes this representation to mean that the Territory will complete item IV-A #20 by the last day of that month, September 30, 2014.

[53] The Monitor requested that this item be completed by 9/18/2014 and the Territory is apparently willing to accommodate that request. *See* Ex. 1 at 49, Email from Nathan Oswald to USDOJ, August 6, 2014.

[54] The Territory represented that they expect to have the training required by this item completed by 8/1/14, but requested two additional weeks to ensure all officers receive the training. *See* Ex. 1 at 37, Letter from Nathan Oswald to USDOJ, July 18, 2014. The United States therefore requests that the Territory provide proof that this training was completed for all officers no later than 8/31/14.

[55] For two other items, IV.A #13 and IV.A #19, the Territory disputes the United States' assessment that these items were not completed, based on the Monitor's on-site observations in June. *See, e.g.*, Ex. 1 at 30. For these two items, the United States will re-check whether the implementation is complete during the September 22-25, 2014 compliance tour.

5/30/14); IV.B #5 (originally due 5/1/14); IV.B #7 (originally due 6/1/14); and IV.F #5 (originally due 6/11/14).

For IV.F #5, the Territory did not respond to the Monitor's email noting that the documents submitted for this item were insufficient. For IV.A #17, IV.A #26, IV.B #5 and IV.B #7, the Territory argues that the United States either did not timely dispute the adequacy of the materials submitted in support of these items, or, in the alternative, that the United States is not permitted to dispute the adequacy of the materials because the Settlement Agreement does not require those work plan items. The first argument is factually incorrect, as both the United States and the Monitor raised concerns regarding the adequacy of the documents submitted to satisfy IV.A #17 and #26. The Territory acknowledged that it did not submit any additional documents to verify IV.B # 5 and #7 aside from documents previously determined to be insufficient. The second argument contradicts the clear text of Section IX of the Settlement Agreement, requiring the Territory to "propose . . . a schedule for policy development, training, and implementation of the substantive terms of this agreement."[56] The Territory's work plan is the required schedule: it was drafted entirely by the Territory, not the United States, for the purpose of satisfying the Settlement Agreement. New dates must be provided by the Territory for when these items will be complete.

The Territory also must provide a date by which they will hire a Medical Director that is medically licensed to supervise medical staff at Golden Grove. As noted above, the Monitor recently discovered that Dr. Burton does not have the proper licensure to serve as Medical Director. The Territory should therefore be ordered to provide a date by which a new Medical

[56] Settlement Agreement, § IX.1, ECF No. 689-1.

Director will be hired, as required by work plan item V #1, or, if possible, a date by which the deficiency in Dr. Burton's licensure can be corrected.

In sum, the Territory must provide new dates by which the following items will be completed: IV.A #17, IV.A #26, IV.B #5, IV.B #7, IV.F #5, and V #1.

Reporting on Status of Compliance with New Deadlines

Finally, to avoid unnecessary exchanges with the Court regarding the status of compliance with the new deadlines, the United States requests that this Court order the Territory to discuss the status of compliance with the above deadlines within their next status report, due to the Court on September 15, 2014.

The United States hopes to avoid litigation on these issues going forward. Hopefully, by incorporating the new deadlines into the orders of the Court, and requiring the Territory to report on those deadlines in its next status report, the Territory will not miss the mark yet again.

V. REQUEST FOR EXPEDITED BRIEFING

Given the extreme risk of harm facing prisoners and staff at Golden Grove, as well as community members, due to the Territory's progress towards compliance with the Settlement Agreement, the United States respectfully requests expedited briefing on this issue. Many of the new deadlines proposed by the Territory are at the end of August and beginning of September. To allow the Court to rule on whether those deadlines should be entered as Orders of this Court in advance of the deadlines, the United States requests that the Territory be given one week from the date of this filing to file their response. The United States will then complete its reply briefing, if any, within three business days. Oral argument, if necessary, could be conducted via telephone or video conferencing at the Court's earliest convenience.

VI. CONCLUSION

The Territory's performance thus far indicates that it does not devote serious attention to its obligations under the Settlement Agreement and the work plan. Despite having created the vast majority of the deadlines in the work plan, the Territory has not stayed on track. As a result, the work plan submitted to the Court is now meaningless—deadlines have come and gone, and there is no set of future deadlines governing this case. There is no mechanism in the Settlement Agreement allowing the Territory to let deadlines pass without any action, and to ask for an extension only after deadlines have passed. If the United States allowed these delays to continue without notifying the Court, we would arrive at the September status conference with very little progress made. Meanwhile, Golden Grove prisoners and staff and the community at large continue to suffer serious harm and risk of harm from the lack of safety, security, and medical and mental health care at Golden Grove. Although the United States is mindful of the Territory's need to focus on the task at hand, the Territory clearly cannot do so on its own. To ensure that this case moves forward at an appropriate pace and does not extend into another three decades, the United States respectfully requests that this Court hold the Territory in contempt of the Settlement Agreement; enter the new deadlines provided by the Territory, as noted in Section IV.E., *supra*, as an Order of this Court; order the Territory to provide new deadlines for the five remaining items; and require the Territory to report on the status of compliance with those deadlines in its official status reports.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 13, 2014, I electronically filed the foregoing using the CM/ECF system, which will send notification to the following:

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