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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

JOSHUA KELLY, *et al.*, Plaintiffs, v. TIMOTHY WENGLER, *et al.*, Defendants.	Case No.: 1:11-cv-00185-EJL **MOTION FOR AN ORDER TO SHOW CAUSE WHY THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT**

INTRODUCTION

In March 2013, the Idaho State Police opened a criminal fraud investigation to determine whether employees of Corrections Corporation of America (CCA) had submitted falsified staffing records to the Idaho Department of Correction (IDOC). One month later, while the criminal investigation was ongoing, CCA publicly confessed that CCA had indeed submitted falsified staffing records to IDOC. In fact, during seven months in 2012 alone, CCA admitted, CCA had submitted falsified records it which it sought payment for 4,800 hours of Correctional Officer (CO) staffing when those posts were actually vacant.

Even if we learn nothing else about what occurred, we know more than enough to hold CCA in contempt of court. CCA violated an order of this Court hundreds of times. Keeping security posts vacant for 4,800 hours in seven months—and submitting fabricated records to conceal it—constitutes a flagrant violation of this Court's September 20, 2011 order. *See* Dkt. 25 (Stipulation For Dismissal and Settlement Agreement) at ¶ 4.

Two things will now be discussed. First, Plaintiffs explain in more detail why CCA should be held in contempt of court based on the 4,800 hours of vacant security posts that CCA acknowledges. Second, Plaintiffs explain why CCA's confession is a fabrication: rather than 4,800 hours of falsified records, the actual number is likely four times that amount (approximately 20,000 hours). Attached to this motion are affidavits from three CCA employees that support this conclusion. The extent of CCA's present deception can only be determined after reasonable discovery, as discussed below.

I. CCA VIOLATED THE SETTLEMENT AGREEMENT

After three days of negotiations, the parties signed a Settlement Agreement (SA) that this Court approved and adopted on September 20, 2011. (Dkt. 25). The SA requires that CCA make a number of improvements at the Idaho Correctional Center (ICC). Paragraph 4 of the SA states in whole as follows:

> CCA will agree to comply with the staffing pattern pursuant to CCA's contract with the Idaho Department of Correction ("IDOC"). In addition, CCA agrees to increase the staffing pattern to include a minimum of three additional correctional officers to be utilized at the discretion of the warden to enhance the overall security of the facility.

This "100% plus 3" guarantee of CO staffing is the single most important provision in the SA, from Plaintiffs' perspective. Plaintiffs bargained for it.

There are three reasons why Paragraph 4 was particularly important to the Plaintiffs. First, the Plaintiffs were certain, as their complaint alleged, that ICC was chronically understaffed and that this understaffing was a leading cause of prisoner violence.[1] The complaint described numerous prisoner-on-prisoner assaults that likely could have been prevented had ICC been adequately staffed.[2]

Second, violence at ICC was notoriously high. A study conducted by IDOC in 2008 found that ICC had four times more prisoner-on-prisoner assaults than Idaho's other seven prisons *combined.* Plaintiffs were convinced that violence could be reduced if ICC was adequately staffed.

Lastly, Paragraph 4 provided the Plaintiffs with an important protection lacking in CCA's contract with IDOC: a federal enforcement mechanism. Plaintiffs were aware of findings from other states (discussed below) that CCA often understaffs its prisons. Paragraph 4, Plaintiffs hoped, would deter CCA from understaffing ICC by making CCA susceptible to a contempt motion if such understaffing were to occur.

However, this did not deter CCA from understaffing ICC. On April 11, 2013, IDOC issued a press release (a copy of which is attached as "Exhibit 1") that states in relevant part (emphasis added):

> The private contractor operating the Idaho Correctional Center (ICC) south of Boise has acknowledged that employees at the prison *falsified staffing records* last year in violation of Correction Corporation of America's contract with the State. . . .[CCA] will compensate the State for the nearly *4,800 hours during a seven-month period* that records indicate correctional officers were staffing security positions *when in fact those posts were vacant.* The Department of Correction announced in *early March* that it had asked the Idaho State Police

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[1] *See* Plaintiffs' Amended Complaint (Dkt.1) ¶¶ 9–11, 33, 392; *see also id.* at 66 ¶ 3 (praying for an injunction requiring CCA to "hire an adequate number of staff").

[2] *Id.* at ¶¶ 49, 175, 257, 263, 278, 368, 375, 378, 381.

> to review *whether a criminal investigation was warranted* after discovering significant discrepancies in ICC's staffing records.

IDOC and CCA agreed in their contract that CCA must hire a specific number of COs to safely operate ICC, and the Settlement Agreement added three more. We now know, however, that CCA reduced security staffing by thousands of hours and falsified its reports to hide these violations, all the while reaping undeserved profits by not providing the staff it was being paid to provide. CCA's failure to comply with Paragraph 4 placed every prisoner—and every member of ICC's staff—at unnecessary risk of assault.

The Settlement Agreement is an order of this Court. It is well established that federal courts may enforce their orders through the power of civil contempt. *See Hutto v. Finney*, 437 U.S. 678, 690 (1978); *U.S. v. Bryan*, 339 U.S. 323, 330-31 (1950); *In re Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir. 1987). Court orders obtained by the consent of the parties, as here, may be enforced the same way as any other decree. *Frew v. Hawkins*, 540 U.S. 431, 432 (2004) ("Federal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, that decree may be enforced."); *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 381 (1992); *Nehmer v. U.S. Dept. of Veteran Affairs*, 494 F.3d 846, 860 (9th Cir. 2007).

As in all other civil proceedings, the plaintiff in a civil contempt proceeding under Rule 70 of the Federal Rules of Civil Procedure has the initial burden of proof: the plaintiff must demonstrate the existence of a court order that creates a clear duty on the part of the defendant that the defendant did not perform. Here, the Plaintiffs easily meet that burden: Paragraph 4 requires CCA to maintain 100% of the CO staffing required by its IDOC contract plus three additional COs, and yet CCA, during a sample of seven months in 2012, was 4,800 hours short on security staff.

Once the plaintiff shows noncompliance of a clear duty, the burden shifts to the defendant to prove an *inability* to comply. *See U.S. v. Bryan*, 339 U.S. at 330-31. As the Ninth Circuit explained in *NLRB v. Trans Ocean Export Packing, Inc.,* 473 F.2d 612 (9th Cir. 1973):

> [A]lthough inability to comply with a judicial decree constitutes a defense to a charge of civil contempt, *United States v. Bryan*, 339 U.S. 323, 330-331, 70 S.Ct. 724, 94 L.Ed. 884 (1950), the federal rule is that one petitioning for an adjudication of civil contempt does not have the burden of showing that the respondent has the capacity to comply. *United States v. Fleischman*, 339 U.S. 349, 362-363, 70 S.Ct. 739, 94 L.Ed. 906 (1950); *Cutting v. Van Fleet*, 252 F. 100, 102 (9th Cir. 1918). *The contrary burden is upon the respondent. To satisfy this burden the respondent must show "categorically and in detail" why he is unable to comply.* (Citation omitted.)

Trans Ocean, 473 F.2d at 616 (emphasis added). *See also In re Crystal Palace,* 817 F.2d at 1365 ("a party can escape contempt by showing that he is unable to comply"). *See also Heinold Hog Market, Inc. v. McCoy,* 700 F.2d 611, 615 (10th Cir. 1983) (holding that once noncompliance is shown, "the defendant [must produce] detailed evidence regarding his inability to comply with the order."); *U.S. v. Santee Sioux Tribe*, 254 F.3d 728, 736 (8th Cir. 2001) (holding that a party that disobeyed a court order can avoid being held in contempt only by showing the compliance was "impossible").

CCA can avoid a finding of contempt only by showing that it took "'all the reasonable steps within its power to ensure compliance'" with the Settlement Agreement and that its failure to comply was due to circumstances beyond its control. *See Hook v. Arizona Dept. of Corrections*, 107 F.3d 1397, 1403 (9th Cir. 1997) (quoting *Sekaquaptewa v. McDonald*, 544 F.2d 396, 406 (1975), *cert. denied*, 430 U.S. 931 (1976)); *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993); *General Signal Corp. v. Donnalco*, 787 F.2d 1376, 1378-79 (9th Cir. 1986); *In re Crystal Palace*, 817 F.2d at 1365.

Moreover, in a civil contempt proceeding, the defendant's subjective intent is not a factor to consider, unlike in a criminal contempt proceeding. To hold a defendant liable for civil contempt, the plaintiff need not prove that the defendant's failure to comply with the relevant order was willful or intentional. *See McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1948); *In re Crystal Palace*, 817 F.2d at 1365; *Bad Ass Coffee of Hawaii, Inc. v. Bad Ass Coffee Ltd. Partnership,* 95 F. Supp.2d 1252, 1256 (D. Utah 2000) ("The contemnor's disobedience need not be 'willful' to constitute civil contempt.") Thus, CCA cannot defend this motion by claiming that it acted in good faith. *See In re Crystal Palace*, 817 F.2d at 1365 (holding that the defendant's proffered good faith defense to a contempt action "has no basis in law"). Intent is not a factor. *Stone v. City and County of San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992) ("Intent is irrelevant to a finding of civil contempt and, therefore, good faith is not a defense.")

Given the hundreds of violations that occurred at ICC during a seven-month period, CCA cannot possibly meet its burden of proof. We are not dealing here with a few technical violations that might justify denying Plaintiffs' motion. *See Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 891 (9th Cir. 1982) (indicating that a "few technical violations" is insufficient to warrant a finding of contempt). Rather, we are dealing here with persistent and significant violations that go to the heart of the order, that placed everyone at ICC at unnecessary risk of assault, that resulted in undue profits to CCA, and which CCA tried to cover-up. It is difficult to imagine a more compelling case warranting a finding of contempt.

CCA had a duty to be "energetic in attempting to accomplish what was ordered." *See NLRB v. James Troutman & Assoc.,* 1994 WL 397338 at *5 (9th Cir. 1994). *See also Bad Ass Coffee,* 95 F. Supp.2d at 1256 (holding a party in contempt where the party had not been

"reasonably diligent and energetic in attempting to accomplish what was ordered.") (citing *Goluba v. School Dist. of Ripon*, 45 F.3d 1035, 1037 (7th Cir. 1995).

Here, then, CCA had a duty to actively monitor the level of staffing at ICC in order to ensure compliance with the 2011 Order. CCA failed that duty miserably. CCA cannot possibly show categorically and in detail energetic efforts to comply with this Court's Order. Had CCA made those efforts--had CCA taken all reasonable steps within its power to comply--there would have been no noncompliance. (Surely CCA will concede that it has the ability to staff ICC in the manner it guaranteed in its contract with IDOC and in the Settlement Agreement to staff it.)

Accordingly, Plaintiffs' motion to hold CCA in contempt should be granted. *See Hook*, 107 F.3d at 1403 (holding prison official in contempt for failing to take all reasonable steps to comply with a court order); *In re Crystal Palace,* 817 F.2d at 1365 (holding that even though the defendants believed that there were exceptional circumstances that warranted their disobedience to a court order, they nonetheless would be held in contempt of court; parties are not permitted to disobey court orders); *Trans Ocean Export Packing, Inc.,* 473 F.2d at 612 (issuing a finding of contempt to a party that had failed to be energetic in complying with a court order); *Sekaquaptewa*, 544 F.2d at 406 (holding a party in contempt for failing to take all reasonable steps to comply with a court order).

"Courts have been particularly unsympathetic to purported excuses for less-than substantial compliance where the contemnor has participated in drafting the order against which compliance is measured." *U.S. v. Tennessee*, 925 F. Supp. 1292, 1302 (W.D. Tenn. 1995). *See also Feliciano v. Vila,* 2007 WL 4404730 at *13 (D.P.R. 2007). When a party participates in drafting the order, it is presumed that the party knows "what it can reasonably accomplish." *Cobell v. Babbitt*, 37 F. Supp.2d 6, 9-10 (D.D.C. 1999).

CCA failed to take all reasonable steps to ensure compliance with the order that it helped write. Its violations were extensive, prolonged, and flagrant. CCA should be held in contempt.

II. CCA'S CONTINUED DECEPTION

Given CCA's confession, the issue is not whether CCA is in contempt of court. That much is obvious. Rather, the issues are (1) to what degree was CCA noncompliant, and (2) what is the proper remedy? If, for instance, CCA's noncompliance was due to a rogue officer at ICC who somehow thwarted energetic and diligent efforts by CCA to comply with its staffing obligations, the remedy might be narrow. On the other hand, if the violations of the order were deliberate, if they were the product of systemic deficiencies, and if CCA is being deceptive even today in covering up the extent of its noncompliance, the remedy needs to be broader, and paying a contingent fine to the Court could be appropriate. Likewise, if CCA has been violating the order for only seven months, it might be appropriate to extend the duration of the order for seven months, whereas if CCA has been violating the order since its inception, a longer extension might be warranted.

The Supreme Court and the Ninth Circuit have made it clear that when a contempt of court has occurred, the district court must issue—and the plaintiff has a right to receive—an effective remedy. As the Supreme Court explained in *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193-94 (1949):

> We are dealing here with the power of a court to grant the relief that is necessary to effect compliance with its decree. The measure of the court's power in civil contempt proceedings is determined by the requirements of full remedial relief.

McComb, 336 U.S. at 193-94. In fashioning an appropriate remedy, federal courts should take into account "the character and magnitude of the harm," the willfulness of the contempt, and the

need to protect the plaintiff against further noncompliance. *U.S. v. United Mine Workers*, 330 U.S. 258, 304 (1947). *See also Whittaker Corp. v. Execuair Corp.,* 952 F.2d 408 (9th Cir. 1991) ("*United Mine Workers* requires the court to consider the 'character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.' *United Mine Workers,* 330 U.S. at 304.") *See also General Signal Corp. v. Donallco, Inc.,* 787 F.2d 1376, 1380 (9th Cir.1986) (holding that on remand, the court must consider *United Mine Workers* factors in awarding a coercive fine).

In *Hutto v. Finney*, 437 U.S. 678 (1978), the Court stated that "federal courts are not reduced to issuing [orders] and hoping for compliance." *Hutto*, 437 U.S. at 690. On the contrary, federal courts have an array of mechanisms to enforce compliance, including the imposition "of a remedial fine." *Id.*, at 691. *See also id.* at 690 ("Many of the court's most effective enforcement mechanisms involve financial penalties.") There are two types of civil contempt fines, one is paid to the court and the other is paid to the complainant. *See Hicks v. Feiock*, 485 U.S. 624, 631-32 (1988); *Roe v. Operation Rescue*, 919 F.2d 857, 868 (3rd Cir. 1990).

"District courts have broad equitable power to order appropriate relief in civil contempt proceedings." *SEC v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003). A district court's authority to create an appropriate remedy "derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Hickey*, 322 F.3d at 1131. *See also Shuffler v. Heritage Bank*, 720 F.2d 1141, 1148 (9th Cir. 1983) (holding that in fashioning an appropriate remedy for civil contempt, the court must "consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired."); *EEOC v. Local 28 of the SMWIA*, 247 F.3d 333, 336 (2d Cir. 2001) (holding that upon a finding that a party is in civil contempt, a district court is vested with "broad discretion to

fashion an appropriate remedy . . . based on the nature of the harm and the probable effect of alternative sanctions." (citation omitted)).

Unless the Plaintiffs are permitted to undertake reasonable discovery, this Court will never know "the character and magnitude" of CCA's noncompliance and will therefore be unable to fashion an appropriate remedy. In the April 21 IDOC press release, CCA made *public* statements that the Plaintiffs believe are false. For instance, the Plaintiffs believe that CCA is being dishonest in claiming that it fabricated only 4,800 hours of staffing records, and that the correct number is four times greater. CCA also stated in the press release that these staff shortages resulted in "no significant increase in violence." Plaintiffs believe that this claim is false as well.[3] In addition, the Plaintiffs believe that CCA's noncompliance was deliberate and, therefore, that the Court should consider monetary sanctions.

This is not the first time that CCA has been found to understaff one of its prisons. In fact, this is a recurring problem with CCA. Government agencies in at least five states—California, New Mexico, Kentucky, Colorado, and Tennessee—concluded that CCA understaffed a prison that housed prisoners from those states. In 2010, the California Office of the Inspector General found that "custody staffing levels were insufficient to adequately monitor inmates."[4] Inspectors, for example, watched fifteen prisoners "move a barrier and go around the metal detector" because of an understaffed security post.[5] That same year, New Mexico's Legislative Finance Committee audited state contracts with CCA and found that the state had paid CCA and another

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[3] Moreover, this statement misses the point. The purpose of Paragraph 4 of the Settlement Agreement was to *decrease* the level of violence.

[4] Calif. Office of the Inspector General, *OIG Areas of Concern with CDCR Out-of-State Facilities* 6 (Dec. 2, 2010), *available at* http://privateci.org/private_pics/CalOutofState12_10.pdf.

[5] *Id.*

corrections corporation nearly $5 million for "*vacant* private prison staff positions" that should have been filled under the state's contracts.[6] The Kentucky Department of Corrections notified CCA's Vice President of Customer Contracts in 2009 that CCA had failed to maintain an appropriate number of staff at a prison housing Kentucky prisoners.[7] The Tennessee Division of State Audit audited CCA contracts in 2003 and concluded that CCA was noncompliant in the area of security staffing, including leaving "critical" positions completely unstaffed and seeking funds for thousands of hours of understaffing.[8] And after a riot in a CCA-run facility in Colorado, a Colorado Department of Corrections report found that the prison was "[n]ot fully staffed" and that understaffing the night of the riot likely delayed the prison's ability to respond.[9] A separate report from the Colorado State Auditor in 2005 noted that "[s]taffing levels maintained by private prisons are one of the primary ways to ensure the security and safety of the facility," but that the private prisons in Colorado—four out of five of which were operated by CCA—were "not maintaining staffing patterns commensurate with similar size and demographically equivalent state facilities."[10]

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[6] Memorandum from Brett F. Woods, Principal Analyst, New Mexico Legislative Finance Committee, re: "NMCD – Staffing Vacancies" 1 (Sept. 7, 2010), *available at* http://privateci.org/private_pics/NMDOCstaffing.pdf.

[7] Letter from LaDonna H. Thompson, Commissioner, Kentucky Department of Corrections, to Natasha Metcalf, Vice President of Customer Contracts, Corrections Corporation of America 2 (July 24, 2009), *available at* http://privateci.org/private_pics/KY%20DOC%20letter%20to%20CCA.pdf.

[8] Tennessee Comptroller of the Treasury, *Performance Audit: Department of Correction* 43–44, apps. 5–6 (2003), *available at* http://www.comptroller.tn.gov/repository/SA/pa02018.pdf.

[9] Colorado Department of Corrections, *After Action Report: Inmate Riot: Crowley County Correctional Facility* 14, 16, 62 (Oct. 1, 2004), *available at* http://privateci.org/private_pics/col1004.pdf.

[10] Colorado State Auditor, *Private Prisons: Department of Corrections: Performance Audit* 43, 45–46 (2005), *available at*

IDOC officials found similar problems at ICC, which prompted IDOC to request the current criminal investigation. For instance, on May 5, 2012, ICC experienced its largest and most violent gang attack. One prisoner was stabbed 18 times. Following an investigation into the incident, IDOC concluded that ICC was understaffed and that CCA tried to conceal it by double-posting personnel.[11] We now know that CCA continued to understaff ICC even after the May 2012 incident, despite IDOC's finding that understaffing played a role in this incident.

Attached to this motion are affidavits from three current or recent ICC employees. These affidavits indicate that the true number of vacant CO posts is at least four times higher—some 20,000 hours—than what CCA admitted in its press release. Because COs at ICC work 12-hour shifts, the 4,800 vacant CO hours is the equivalent of 400 vacant CO shifts, or fewer than two CO shifts per day over the seven-month period covered in CCA's admission. According to the three affidavits submitted by persons with first-hand knowledge, CCA is typically short a minimum of four COs, and frequently ten or more.

Susan Fry has been on staff at ICC for more than a decade.[12] Currently a Correctional Counselor, Fry is 50 years old and has worked in law enforcement for over 25 years.[13] Fry testifies in her affidavit that ICC is "chronically and severely understaffed."[14] Virtually every

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http://www.leg.state.co.us/OSA/coauditor1.nsf/All/FC4A43C259BADC498725701B00755584/$FILE/1676%20Private%20Prisons%20Perf%20April%202005.pdf.

[11] Idaho Dep't of Correction, Serious Incident Review Report 7 (June 7, 2012) (attached as "Exhibit 2") at ___.

[12] Aff. Fry ¶ 3.

[13] *Id.* at ¶¶ 1–2.

[14] *Id.* at ¶ 5.

day, supervisors forge staff rosters to make it look like ICC is fully staffed.[15] During day shifts, ICC is often short by ten or more COs—and the night shift often has even more vacant CO posts.[16] Entire housing units go understaffed more than 90% of time.[17] There is a direct correlation between the number of vacant CO posts and the number and severity of fights.[18] Because of staff shortages, many assaults at ICC are not observed or reported.[19]

Annette Mullen's affidavit also accompanies this motion. Mullen, like Fry, was a Correctional Counselor at ICC, where she worked for nearly four years until she quit in January 2013.[20] She testifies that "ICC was understaffed on a daily basis and falsified the staff roster every day to cover this up."[21] The chronic understaffing persisted for the entire time she worked there, with at least two to five vacant CO posts every day shift and five to ten vacant CO posts at night, and this understaffing was a direct cause of prisoner violence.[22]

Jaune Sonnier has worked as an Additions Treatment Counselor at ICC continuously since August 2010.[23] Her office is inside a prisoner housing pod at ICC, and yet Sonnier sees a CO there only one or two times per week.[24] Sonnier has personally observed prisoners evade

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[15] *Id.* at ¶ 6.

[16] *Id.* at ¶ 8.

[17] *Id.* at ¶ 12.

[18] *Id.* at ¶ 9.

[19] *Id.* at ¶ 28.

[20] Aff. Mullen ¶ 2.

[21] *Id.* at ¶ 4.

[22] *Id.* at ¶ 5, 8.

[23] Aff. Sonnier ¶ 2.

[24] *Id.* at ¶ 6.

metal detectors as a result of understaffing.[25] The security of all ICC prisoners, Sonnier is certain, has been severely compromised by understaffing.[26]

Fry and Mullen explain three methods that ICC administrators used every day to fraudulently report that CCA was complying with its staffing obligations. One is to falsely list an officer as having worked a shift who was not even in the building during those hours.[27] Another is to assign COs who had already worked 12-hour shifts to work an additional four-hours into the next shift, yet when those COs left the building after 16 hours, the post would be vacant for the remaining eight hours but ICC administrators would list the post as having been fully staffed the entire shift.[28] A third scheme often used is to double-post staff by assigning the same person to work both as a floor CO and a Case Manager or Correctional Counselor position at the same time.[29] All three witnesses report that they have complained about understaffing to their supervisors to no avail.[30] A Lieutenant at ICC confirmed to Fry that CCA doctors the facility staffing schedule every day to make it look good for the state.[31]

As discussed in a separate motion being filed today, the Plaintiffs respectfully request an opportunity to engage in limited but reasonable discovery aimed at uncovering the character and magnitude of CCA's contemptuous conduct. Without this information, it will be difficult if not

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[25] *Id.* at ¶ 13.

[26] *Id.* at ¶ 14.

[27] Aff. Fry ¶ 20; Aff. Mullen ¶¶ 10–11.

[28] Aff. Fry ¶ 19; Aff. Mullen ¶ 12.

[29] Aff. Fry ¶ 18; Aff. Mullen ¶ 14.

[30] Aff. Fry ¶¶ 13–14, 22; Aff. Mullen ¶¶ 9, 16; Aff. Sonnier ¶ 9.

[31] Aff. Fry ¶ 22.

impossible for the Court to accurately assess the character and magnitude of CCA's actions. CCA, for instance, will likely contend that it has engaged in nothing that warrants an extension of the termination deadline of the Settlement Agreement and nothing that warrants any other sanctions. CCA will also likely contend that its violations of the court order were not willful. CCA, however, has critical evidence in its possession related to all of those contested issues, and unless the Plaintiffs are allowed to pursue discovery, they will be at a distinct disadvantage both in this Court and in any potential appeal. CCA simply cannot be allowed to control what information the Court (and the Plaintiffs) can learn about CCA's activities, particularly where CCA has made public statements on these very issues that the Plaintiffs believe are false and deceptive.

We know that CCA falsified 4,800 hours of staffing records. CCA should be held in contempt of court for that alone. But until we discover whether CCA did far more than that--as the Plaintiffs believe is the case--the Court cannot fashion an appropriate remedy and CCA could evade the full consequences of its actions.

CONCLUSION

Plaintiffs respectfully request pursuant to Rule 70 that this Court enter an order to show cause why the defendants should not be held in contempt of court.

DATED this 11th day of June, 2013.

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

/s/ Stephen L. Pevar

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/s/ Richard Alan Eppink

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of June, 2013, I electronically transmitted the foregoing to the following people at their email addresses of record, listed below:

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To: Jeffrey Ray <jeray@idoc.idaho.gov>
Subject: IDOC News Release - Staffing records falsified

Idaho Department of Correction
News Release

CCA acknowledges falsification of staffing records at ICC

BOISE, April 11, 2013 – The private contractor operating the Idaho Correctional Center (ICC) south of Boise has acknowledged that employees at the prison falsified staffing records last year in violation of Corrections Corporation of America's (CCA) contract with the State.

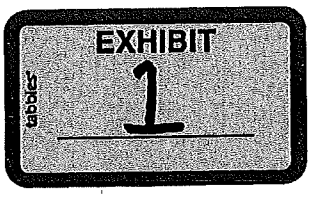
Idaho Board of Correction Chairman Robin Sandy and Department of Correction Director Brent Reinke said the findings of an internal review by CCA would be included in the agency's own continuing investigation of contract violations at ICC.

Nashville, Tenn.-based CCA said it deeply regrets the violations, and that it will compensate the State for the nearly 4,800 hours during a seven-month period that records indicate correctional officers were staffing security positions at ICC when in fact those posts were vacant. That represents a small fraction of the total staffing requirements at the 2,104-bed ICC from May through November 2012, and that there was no significant increase in violence or other security incidents during the period in question.

The Department of Correction announced in early March that it had asked the Idaho State Police to review whether a criminal investigation was warranted after discovering significant discrepancies in ICC's staffing records. ISP Colonel Ralph Powell said the new information from CCA would be reviewed by investigators and compared with the Department of Correction's own findings.

The company said it would take appropriate disciplinary action with the ICC personnel involved, and that staffing, training and recordkeeping processes would be improved..

Chairman Sandy and Director Reinke said they would work with the Department of Administration to determine what steps to take regarding CCA's $29 million annual contract with the State. It expires on June 30, 2014, with the option for up to two two-year extensions.



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