IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

CYNTHIA B. SCOTT, *et al.*,	)	
	)	
Plaintiff,	)	
	)	Case No. 3:12-cv-00036-NKM
v.	)	Sr. Judge Norman K. Moon
	)	
HAROLD W. CLARKE, *et al.*,	)	
	)	
Defendants.	)	
	)	

PLAINTIFFS' REPLY MEMORANDUM IN FURTHER SUPPORT OF THEIR MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT

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Plaintiffs Cynthia Scott, *et al.*, by their attorneys, submit this Reply Memorandum in further support of their Motion for Order to Show Cause Why Defendants Should Not Be Held In Contempt and supporting papers filed September 6, 2017 (*see* ECF Docket Nos. 265, 266), and in response to the Defendant Virginia Department of Corrections' Opposition to the Motion for Order to Show Cause, filed October 10, 2017 (ECF Dkt. Nos. 285, 286).

INTRODUCTION

Plaintiffs initiated the instant proceeding, seeking a finding of civil contempt due to the Defendants' failure to fulfill the obligations to which they committed under the terms of a Settlement Agreement approved and entered by this Court as a Consent Judgment on February 6, 2016 (ECF Dkt. No. 262). The Plaintiffs filed this contempt Motion because many class members continue to suffer serious harm due to the VDOC's persistent provision of constitutionally-deficient medical care at FCCW on a systemic basis. The Plaintiffs supported their Motion with a substantial volume of documentary evidence, including copies of the periodic written reports prepared by Compliance Monitor Nicholas Scharff, M.D., The Reports attest to the VDOC's persistently deficient performance with respect to particular aspects of medical care at FCCW identified by the Settlement Agreement; Plaintiffs also submitted 36 sworn Declarations submitted by Named Plaintiffs and class members adversely affected in a variety of ways by the substandard care that FCCW continues to provide, supported by copies of medical records and grievances in some instances. *See generally* ECF Dkt. No. 266, Exhs. 10-54.

The VDOC's Opposition to the Plaintiff's Motion focuses and relies primarily upon:

(i) A contrived interpretation as to the meaning and effect of language in the Settlement Agreement freeing the VDOC from compliance with obligations to which it previously readily agreed;

(ii) An effort to minimize the substance and significance of critical findings by the Compliance Monitor, Dr. Scharff, reflecting the VDOC's non-compliance with standards established by the Settlement Agreement;

(iii) Dismissal of the Declarants' sworn factual accounts regarding the sub-standard medical care that they continue to experience at FCCW as mere expressions of "desires and perceptions" somehow divorced from the Eighth Amendment "deliberate indifference" standard; and

(iv) A concocted argument that the Plaintiffs' Motion is premature, ostensibly because the earliest date on which the VDOC may be called upon to demonstrate its "substantial compliance" with its constitutional obligations and the terms and conditions of the Settlement Agreement has yet to arise.

The plain language of the Settlement Agreement, on its face, refutes the VDOC's contention that the Plaintiff's Motion is not yet ripe, and that is the only one of the VDOC's main themes that, even if valid, could serve as a basis for preventing the issuance of an Order to Show Cause. The VDOC's other arguments are addressed to the ultimate merits of the Plaintiffs' request for a finding of civil contempt, but none of them could establish grounds for denying the Order to Show Cause as a threshold matter. For these reasons, as elaborated more fully below, the Plaintiffs' Motion should be granted.

ARGUMENT

I. PLAINTIFFS HAVE SATISFIED THE APPLICABLE LEGAL STANDARDS FOR AN ORDER TO SHOW CAUSE

The parties' submissions reflect their agreement on the point that in order for the Court to reach a finding that the VDOC is in civil contempt, the Plaintiffs, as movants, must establish four elements by clear and convincing evidence:

> (1) The existence of a valid decree of which the alleged contemnor had actual or constructive knowledge: (2) that the decree was in the movant's 'favor'; (3) that the alleged contemnor by its conduct violated the terms of the decree and had knowledge (at least constructive knowledge) of such violations; and (4) that the movant suffered harm as a result.

Memorandum in Support of Plaintiffs' Motion ("Plaintiffs' Mem.") at 17 (*citing* case authorities) (ECF Dkt. No. 266); *accord* Defendants' Opposition Memorandum ("VDOC Opp.") at 21 (ECF Dkt. No. 286). However, for purposes of the threshold determination as to whether the Plaintiffs' request for the issuance of an Order to Show Cause should be granted, this Court need not reach or decide the ultimate question of the Plaintiffs' right to prevail on the merits of their civil contempt claim.

Rather, it is sufficient at this stage for the Court to be satisfied that the allegations set forth by the Plaintiffs in support of their Motion, if proven to be true, are of sufficient weight to meet the applicable "clear and convincing" standard of proof. Illustrative in this regard is *Cree, Inc. v. Bain*, Case No. 1:15-cv-547, 2015 WL 12911462 (M.D.N.C. July 20, 2015), wherein the district court, in entering an order to show cause under circumstances analogous, procedurally, to those presented here, stated in pertinent part:

> "If the moving party makes a prima facie showing of [the four required elements], the burden shifts to alleged contemnor to justify [its] non-compliance." *U.S. Commodity Futures Trading Comm'n v. Capitalstreet Fin., LLC*, 3:09cv387 JC-DCK, 2010 WL 2131852, at *2 (W.D.N.C. May 25, 2010) (*citing United States v. Rylander*, 460 U.S. 752, 757 (1983)).
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> * * *
>
> While the Court reserves ruling as to whether these facts have been proven for purposes of ruling on the motion to hold Mr. Bain in contempt, pending giving Mr. Bain an opportunity to be heard, the Court concludes that Cree has made the preliminary showing required for the issuance of a show cause order.

Id. at *1-*2 (citations omitted); *cf. United States v. Ali*, Case No. PWG-13-3398, 2016 WL 8628348, at *1 (D. Md. March 29, 2016) (show cause order issued where the District Judge "ruled that the IRS had met its burden of establishing by clear and convincing evidence a prima facie showing" that the required elements for a civil contempt finding were present); *see generally Wyatt ex rel. Rawlins v. Sawyer* 80 F. Supp. 2d 1275, 1278 (M.D. Ala. 1999):

> The defendants maintain that the plaintiffs have not [shown entitlement to entry of an order to show cause] because the plaintiffs have not come forward with *clear and convincing evidence* of civil contempt. The defendants confuse what the plaintiffs must produce at trial (clear and convincing evidence) with what they must show for issuance of a show-cause order (adequate allegations). The Eleventh Circuit has made clear that, for issuance of a show-cause order, the plaintiff need make only detailed *allegations* which, if true, would support a finding of contempt.

Id. at 1278 (emphasis in original), *citing Wyatt v. Rogers*, 92 F.3d 1074, 1078 n.8 (11th Cir. 1996) *and Mercer v. Mitchell*, 908 F.2d 763, 768 (11th Cir. 1990).

Consistent with these principles, the Plaintiffs' Motion and supporting papers set forth specific, detailed allegations identifying the parties' Settlement Agreement approved and enforced by this Court as a Consent Judgment, of which the VDOC was clearly well aware. The acts and omissions on the part of VDOC in clear breach of the obligations it assumed and the standards to which is subject in providing medical care to the residents of FCCW are also alleged, as attested to, *inter alia*, by the Compliance Monitor's Reports and the class members' sworn Declarations. Finally, the Motion details the significant harm that the Plaintiffs have suffered and continue to suffer as a result.

Insofar as Plaintiffs can discern, the VDOC's Opposition offers only one line of argument that, if sustained, could preclude the issuance of an Order to Show Cause despite the Plaintiffs' satisfaction of their *prima facie* pleading obligations as described above. The VDOC advances a strained (and strange) construction of language set forth in the section of the Settlement Agreement addressing the manner in which the Agreement can be terminated. The language in question states, in its entirety, as follows:

> This Settlement Agreement shall terminate as of the date on which the Defendant has achieved substantial compliance with all elements of performance of its obligations to provide constitutionally-adequate medical care under the Eighth Amendment, subject to the Compliance Monitor's evaluation under this Settlement Agreement, and has consistently maintained such substantial compliance for a period of one year, provided, however, that the termination may

> not take effect less than three years form the Effective Date unless the Parties, by and through their respective counsel, mutually agree to termination within a shorter period of time.

See ECF Dkt. No. 221-1, Sec. VI, ¶ 10 at 26.

This provision does nothing more than explain that the VDOC will remain subject to the terms and conditions of the Settlement Agreement as a whole, until such time as it has achieved "substantial compliance" with all of the obligations embodied therein, including VDOC's obligation to provide a constitutionally-adequate level of medical care at FCCW, for at least one full year. The provision further requires that the duration of the Agreement must be *at least three years* from the date of Court approval unless both parties expressly agree otherwise. *See id*. The VDOC contends, however, that the meaning and import of this same language is that it establishes the *only* "unequivocal command" to the VDOC included within the entire 27-page Settlement Agreement, *and* that since "substantial compliance" with all of the obligations imposed by the Agreement must be achieved within two years of the Effective Date (February 6, 2016), in order for the Agreement to expire, by its terms, within three years, the Plaintiffs are not entitled to insist upon the VDOC's "substantial compliance" with the terms of the Settlement Agreement until February 6, 2018 – two years after this Court formally approved the Agreement -- at the earliest. *See* VDOC Opp. at 23 (ECF Dkt. No. 286).

This is complete nonsense. The VDOC seriously expects this Court to accept that, after vigorously contesting this litigation from its initiation in July 2012 until the eve of trial in November 2014 in pursuit of constitutionally-adequate medical care at FCCW for the entire class that was demonstrably and woefully lacking, the Plaintiffs then agreed to terms effectively barring them from seeking to enforce the terms of the Settlement Agreement *for a full two years* from the date of Court approval. Plaintiffs did no such thing.

Contrary of the VDOC's newly-minted argument, the express terms of the Settlement Agreement provide an avenue for a court challenge to the VDOC's continuing deficient performance in rendering appropriate medical care *at any time* during the life of the Agreement. Only two simple conditions precede the Plaintiffs' exercise of this right: (i) Plaintiffs must provide the VDOC with prior notice concerning any aspect of medical care the quality or quantity of which was perceived by the Plaintiffs to fall below Eighth Amendment standards; and (ii) a thirty-day period within which the VDOC, if it so chose, could implement a "cure" of the described deficiency. In this regard, the Settlement Agreement unambiguously provides, in pertinent part, as follows:

> If the Plaintiffs, during the time period in which this Settlement Agreement is in effect, identify a deficiency in any aspect of the medical care provided by the Defendant at FCCW that they believe involves constitutionally-inadequate care, they . . . may bring the problem to the Defendant's attention by written notice. The date of receipt of such notice by the Defendant shall trigger the running of a 30-day period within which the Defendant may determine and implement a cure of the problem identified, or attempt to otherwise resolve the problem through negotiations with the Plaintiffs' counsel.
>
> * * *
>
> In the event that a problem of constitutionally-deficient medical care on the part of the Defendant, and brought to the Defendant's attention by the Compliance Monitor or the Plaintiffs' counsel pursuant to the provisions of Section IV.c.2 . . . has not been cured or otherwise resolved to the satisfaction of the Plaintiffs . . . upon expiration of the 30-day period following the provision of such notice to the Defendant, the Plaintiffs, by and through their counsel, may initiate proceedings before the Court seeking specific performance of the terms of this Settlement Agreement, contempt sanctions against the Defendant, or both.

See ECF Dkt. No. 221-1, Sec. IV.2.C. at 19; *id*., Sec. V.2 at 23.

Quite clearly, neither the plain language of these provisions of the Settlement Agreement nor logic or common sense lend any credence to the VDOC's proposition that the parties agreed to a protocol pursuant to which the Plaintiffs would be barred for 2 years from bringing *any* court challenge to the continuing and patent constitutional inadequacy of certain of the medical care

afforded by the VDOC at FCCW after reaching the overwhelmingly favorable Settlement Agreement to which the VDOC agreed in order to avoid trial.[1]

Because the VDOC's sole argument offered to defeat the granting of the Plaintiffs' request for issuance of an Order to Show Cause lacks basis, and the Plaintiffs have otherwise satisfied their threshold pleading burden, an Order to Show Cause should be entered.

II. THE VDOC'S EFFORT TO UNILATERALLY REDEFINE AND RETREAT FROM THE OBLIGATIONS IT ASSUMED UNDER THE SETLEMENT AGREEMENT MUST BE REJECTED

The VDOC makes a second untenable argument that the Statement of Purpose set forth in the parties' Settlement Agreement -- situated, notably, under the heading "Substantive Provisions" -- somehow diminishes the Defendants' obligations. The section states, in pertinent part, as follows:

> In order to insure that the quality and quantity of medical care to be provided by the Defendant to prisoners residing at FCCW as of and following the Effective Date of this Settlement Agreement shall meet or exceed constitutional requirements under the Eighth Amendment, the Defendant shall be obligated to achieve and maintain compliance with the Operating Procedures, Guidelines and Standards governing the provision of medical care that are set forth in this Section below or incorporated in this Section by reference.

ECF Dkt. No. 221-1, Sec. III, ¶ 1, at 5.

The VDOC wrongly seizes upon the "meet and exceed" language, and insists that the Statement of Purpose must be construed as merely "aspirational," rather than as a required element of the Settlement Agreement overall -- ostensibly because VDOC is not legally

[1] As this Court noted in explaining its determination to approve the parties' Settlement Agreement, "the [VDOC was] confronted with the prospect of a bench trial on the heels of the Court's rejection of their potentially case-dispositive defenses as a matter of law and the Court's pronouncement that it, as the factfinder, could reasonably find that the VDOC was deliberately indifferent to the Plaintiffs' serious medical needs in violation of the Eighth Amendment." *See* ECF Dkt. No. 261 at 24. As a result, settlement was plainly the prudent choice for the VDOC.

obligated to provide medical care that *exceeds* constitutional minimum standards. *See* VDOC Opp. at 2 (ECF Dkt. No. 286).

This wholly-invented and fanciful "tension" between purportedly "aspirational" goals and concrete constitutional requirements then serves as the springboard for the VDOC's highly selective and demonstrably misleading examination of snippets from certain of the Declarations filed in support of the Plaintiff's Motion. The VDOC mischaracterizes the Declarations in suggesting that they merely reflect expression of class members' "desires and perceptions" which fail to implicate any breach of "the constitutional standard regarding adequate healthcare." *Id*. at 2-3.[2] While the lack of candor and merit characterizing the VDOC's treatment of the Declarations will be revisited more fully below, it is critical for present purposes to note the unprincipled, unfounded nature of the VDOC's effort to distance itself from any aspect of the obligations it freely agreed to assume under the Settlement Agreement.

In this regard, the impediment to the VDOC's attempt to recast its responsibilities as merely precatory, and not obligatory, are the requirements of the Prison Litigation Reform Act, 18 U.S.C. § 3626(a), and this Court's findings thereunder. In resolving this action in accordance with the applicable PLRA mandate, the parties expressly agreed "that the prospective relief established by this Settlement Agreement is narrowly drawn, extends no further than is necessary to address and remedy the violations of federal rights alleged by the Plaintiffs in their pleadings

[2] In an effort to reinforce this fiction, VDOC goes so far as to contend that "[t]he Plaintiffs' Motion for Show Cause refers to their intention to enforce the Settlement Agreement for 'actual or *perceived* breach.'" VDOC Opp. at 3 (emphasis added). Contrary to this charge, Plaintiffs merely listed in their factual recitation, as one of several elements of the Settlement Agreement reached by the parties, "[p]rovisions for procedures to enforce the terms of the Settlement Agreement in the event of an actual or perceived breach[.]" Plaintiffs' Memo at 3. The VDOC's attempt to convert this observation into a statement of "intention" is disingenuous, to say the least.

in this action, [and] is the least intrusive means necessary to correct these alleged violations[.]" ECF Dkt. No. 221-1, Sec. VIII at 27. In granting approval of the Settlement Agreement and entering it is a Consent Judgment, this Court found accordingly. *See* ECF Dkt. No. 261 a 28-29.

Viewed in light of the PLRA requirements satisfied by stipulation of the parties and findings by the Court, the VDOC's groundless attempt to recast any aspect of the obligations it assumed under the Substantive Provisions of the Settlement Agreement as merely "aspirational" must be summarily rejected.

III. THE VDOC HAS FAILED TO UNDERCUT THE PLAINTIFFS' *PRIMA FACIE* SHOWING THAT THE SETTLEMENT AGREEMENT HAS BEEN BREACHED

Proclaiming that "[t]he Settlement Agreement is consistent with the VDOC's mission to provide quality health-care" (VDOC Opp. at 2), the VDOC strives to convey the impression that it has been steadfastly committed to the objective of fulfilling the obligations imposed by the Agreement and that its efforts have borne significant fruit. *See, e.g., id.* at 24 ("VDOC has made much progress towards its goal of meeting or exceeding constitutionally adequate standards in the eighteen months between the Effective Date of the Settlement Agreement and the filing of the Plaintiffs' motion to show cause."). Unfortunately, the facts simply do not support the VDOC's rosy scenario.

On the contrary, as the Plaintiffs demonstrated in their Motion papers, the findings and conclusions reached by the Compliance Monitor, Dr. Scharff, demonstrate the significant extent to which the VDOC has failed to make substantial progress towards comprehensive provision of medical care that meets Eighth Amendment standards. *See generally* Plaintiffs Mem. at 5-14 & Exhs. 1, 2, 4 - 8 (summarizing Dr. Scharff's monitoring Reports). Indeed, even the most recent Report of the Compliance Monitor, disseminated after the filing of Plaintiffs' Motion (*see* VDOC Opp., Exh. 1), finds that the VDOC has achieved full compliance with expectations with

respect to only 9 of the 23 performance indicators with which the Settlement Agreement is principally concerned.[3]

Moreover, the VDOC's own supporting evidence underscores the extent to which any affirmative measures as the VDOC has undertaken to meet its constitutional obligations embodied in the Settlement Agreement are a reaction to significant pressure applied by the Plaintiffs, not self-initiated and proactive. *See, e.g.*, VDOC Letters to Armor Correctional Health Services, Inc. and Mediko, P.C., respectively -- *dated September 27, 2017* -- "seeking new proposals to address the challenges of providing health care services at Fluvanna." VDOC Opp., Exh. 3, Encl. A.

The sworn Declarations provided by the Named Plaintiffs and other class members attesting to the ongoing substandard medical care being provided at FCCW, which are substantially similar in form and substance to the Declarations upon which this Court relied in granting class certification and denying the VDOC's Motion for Summary Judgment, similarly undermine the VDOC's attempt to tout its purported accomplishments under the Settlement Agreement. Although VDOC complains that the Declarations contain "hearsay" and set forth "conclusory allegations" (VDOC Opp. at 24, 26), those characterizations are unsupported. To the significantly limited extent that the VDOC attempts to confront the content of the

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[3] It should also be noted that for several of the performance indicators as to which the Compliance Monitor awarded the VDOC a score of "partially compliant" -- *e.g.*, Sick Call Process/Access to Health Services; Physical Therapy; Medical Grievance Process; and Criteria for Performance Measures, Evaluation and Comprehensive QI -- the grades are based upon VDOC representations concerning improved performance that Dr. Scharff has not yet actually observed. *See* VDOC Opp., Exh. 1. His reporting in this regard contravenes the Settlement Agreement admonition that "[t]he Compliance Monitor shall be responsible for *independently verifying* any representations made by the Defendant and/or the Contractor regarding progress towards satisfaction of the obligation to provide constitutionally-adequate medical care . . . and examining all supporting documentation." ECF Dkt. No. 221-1, Sec. IV.2.c. at 18 (emphasis added).

Declarations at all, it does so only in an inaccurate, incomplete and essentially misleading manner.

Concerning the Declaration proffered by class member April Deeds, the VDOC selectively references Ms. Deeds' stated belief that she should have started dialysis for her kidney condition sooner than she did to illustrate the VDOC's proffered distinction between prisoners' mere *perception* that they are receiving inadequate medical care and a reality that they are receiving inadequate medical care. VDOC Opp. at 3. Because, according to the VDOC, Ms. Deeds wrote the Compliance Monitor, Dr. Scharff, to express her concerns in this regard, and Dr. Scharff's response to Ms. Deeds reflected his disagreement with her assessment -- *see id*. at 3 & Exh. 5 thereto -- the VDOC brushes off Ms. Deeds' entire Declaration as illustrative of nothing more than an example of a prisoner seeking to unilaterally dictate her own medical treatment. VDOC dismissively concludes that "[c]onstitutionally adequate medical care does not mean that inmate patients decide when and how they receive treatment for their diseases." *Id*. at 3-4.

VDOC's conveniently circumscribed portrayal of Ms. Deeds' Declaration fails to even remotely meet the substance of the submission as a whole. In truth, Ms. Deeds' Declaration describes multiple treatment recommendations by her treating rheumatology specialist at UVA Medical Center -- unquestionably a knowledgeable and informed medical practitioner -- that were either unduly delayed or not acted upon at all by FCCW. For example, in May 2017, the UVA rheumatologist referred Ms. Deeds to a gastro-intestinal specialist, and offered an appointment that same day. FCCW declined the same-day appointment, and Ms. Deeds was not seen by the GI specialist until three months later. Decl. A.D. ¶¶ 26-27 (ECF Dkt. No. 266, Exh. 17). The UVA rheumatologist also recommended that Ms. Deeds receive a kidney ultrasound and a liver biopsy within two-three weeks. Ms. Deeds did not have the kidney ultrasound until

seven weeks later and, insofar as Plaintiffs' counsel are aware, she has yet to receive the liver biopsy. *Id*. Lastly, while the VDOC marginalizes Ms. Deeds' complaints about problems with her dialysis fistula (now that she is receiving dialysis) as nothing more than proof of "Dr. Scharff's point that patients may feel better [without] dialysis before it is absolutely required" (VDOC Opp. at 4), it blithely ignores her Declaration's recitation concerning FCCW's repeated mismanagement of the fistula, resulting in at least one trip to the emergency room, and that it subsequently allowed her replacement chest catheter to become infected, necessitating another ER visit. Decl. A.D. ¶¶ 31-34, 45. The VDOC's silence concerning any of these issues, clearly involving facts and not the declarant's "perceptions", speaks volumes.

So it is with the VDOC's treatment of the Declaration of Wanda Turner (ECF Dkt. No. 266, Exh. 37), as well. Ms. Turner's Declaration focuses principally upon a lengthy description of a back problem from which she suffers, for which physical therapy was prescribed but never provided by FCCW, such that she ultimately had to resort to use of a cane in order to walk. Decl. W.T. ¶¶ 12-15. Ms. Turner also described repeated instances in which the prescribed medication for her hypertension was allowed by FCCW to run out, as well as episodes in which FCCW nurses administering the Pill Line provided her with the wrong medication. *Id*. , ¶¶ 20-22. The VDOC's Opposition disregards this factual recitation in its entirety.

As with Ms. Turner's Declaration, the VDOC similarly disregards a multiple-paragraph factual recitation in the Declaration of Cynthia Scott (ECF Dkt. No. 266, Exh. 13), concerning the deficient care Ms. Scott continues to experience at FCCW with respect to a multiplicity of serious medical needs (*see id*., ¶¶ 4-34). Instead, VDOC hones in only on Ms. Scott's observation that "[o]ne week I will see one doctor and the next time I see another doctor, he will tell me something different." Decl. C.S., § 38. According to the VDOC, what it characterizes as

a "demand" that patients see the same doctor at each visit "wrongfully focus[es] on the provider versus the quality of the medical services provided." VDOC Opp. at 4. This analysis completely obscures the thrust of Ms. Scott's point, which is not -- as VDOC would have it -- based on some sort of obsession on Ms. Scott's part with a preference for seeing one provider as opposed to another as an abstract proposition, but rather is *expressly* concerned with *consistency and continuity* as critically-important features of constitutionally-adequate care. The Settlement Agreement itself explicitly recognizes this priority. *See* Decl. C.S., ¶ 38 ("We have no consistency nor continuity of care in the doctors who treat us."); ECF Dkt. No. 221-1, Sec. III.2.b. (Standards for FCCW) ix. at 10 ("*Offenders shall have continuity and coordination of care for chronic conditions* such as hypertension, diabetes, cancer and other diseases that require periodic care and treatment." (Emphasis added.)).

Especially at this stage of the proceedings, prior to this Court's consideration of the merits of the civil contempt issue, the Plaintiffs need not belabor the point. The Declarations supporting their Motion detail repeated instances of substandard medical care at FCCW demonstrating that, on a systemic basis, the VDOC's deliberate indifference to the serious medical needs of the class members persists, with grave consequences including needlessly premature deaths. *See* ECF Dkt. No. 266 at 24-26 & Exhs. 35, 40 (filed under seal).

In this regard, Plaintiffs' counsel learned, subsequent to the filing of the pending Motion, of the tragic circumstances of a third recent death at FCCW, involving prisoner Marie Johnson, age 50, who passed away on August 21, 2017 at VCU Medical Center after an extended period of illness involving a complex of medical problems including -- among other concerns -- extreme weight loss, severe abdominal pain, paralysis in upper and lower extremities, irregular heart beat and pancreatitis. The Armor Mortality Review Report, dated September 22, 2017, acknowledges

numerous deficiencies in the treatment Mr. Johnson received by nurse and physician providers at FCCW prior to her untimely demise. *See* Exhibit 1 hereto (filed under seal).[4]

If the VDOC chooses to avert its eyes from the significant volume of damning factual evidence presented by the Plaintiffs, in favor of cherry-picking isolated statements imbedded in a small fraction of the total number of Declarations submitted in a vain effort to support a rhetorical distinction between "perception" and reality for which the record as a whole provides no support, that is its prerogative. But its seriously-flawed attack on the Declarations provides no basis for denial of the Plaintiff's Motion.

CONCLUSION

For all of the forgoing reasons, as well as for the reasons set forth in the Plaintiffs' Motion and supporting submissions, an Order to Show Cause should be issued.

[4] FCCW prisoner Donna Hockman, who shared a room with Ms. Johnson in Building 6, C Wing, from late April to early June 2017, repeatedly expressed her concerns about Ms. Johnson's physical wellbeing to correctional staff and administrators and begged that Ms. Johnson be reassigned to the Infirmary or an alternative location where Ms. Johnson would be provided the medical help she needed. Decl. D.H. ¶¶ 8-9 (Exh. 2 hereto). Ms. Hockman went so far as to ask that members of her family call the Prison and complain about Ms. Johnson's situation, and they did so on at least two occasions, to no avail. *Id*. at ¶ 10. Finally, on or about June 9, 2017, Ms. Hockman approached Assistant Warden Hill and spoke to her about Ms. Johnson's health concerns. *Id*. at ¶ 11. Approximately 30 minutes later, Ms. Hochman was reassigned to a different housing unit, and she did not hear anything more of Ms. Johnson until learning of her death in September. *Id*., ¶¶ 12-13.

DATED: October 31, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2017, a true and correct copy of Plaintiffs' Reply Memorandum In Further Support Of Their Motion For An Order To Show Cause Why Defendants Should Not Be Held In Contempt was served electronically upon the following:

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