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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAMES NEUROTH, et al.,)	Case No. 15-cv-03226-RS
)	
Plaintiffs,)	San Francisco, California
)	Friday, January 25, 2019
vs.)	
)	
MENDOCINO COUNTY, et al.,)	
)	
Defendants.)	
_____)	

TRANSCRIPT OF SETTLEMENT
BEFORE THE HONORABLE LAURA BEELER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiffs:	JULIA SHERWIN, ESQ. Haddad & Sherwin LLP 505 Seventeenth Street Oakland, California 94612 (510) 452-5500
Also Appearing:	PLAINTIFF JAMES NEUROTH BELLA NEUROTH
For Defendant Mendocino County:	MICHAEL VRANICAR, ESQ. Patton & Ryan LLC 330 N. Wabash Avenue, Suite 3800 Chicago, Illinois 60611 (312) 261-5172
Also Appearing:	BRINA BLANTON

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 APPEARANCES: (Cont'd.)

2	For Defendant CFMG:	PETER G. BERTLING, ESQ. Bertling Law Group, Inc. 15 West Carrillo Street, Suite 104 Santa Barbara, California 93101-8215 (805) 879-7558
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5	For Defendant City of Willits, Officer Jeffrey 6 Andrade, and Officer Kevin Leef:	AMY S. WINTERS, ESQ. Perry Johnson Anderson Miller & Moskowitz LLP 438 First Street, Fourth Floor 7 Santa Rosa, California 95401 (707) 525-8800
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8	Also Appearing:	CHIEF OF POLICE SCOTT WARNOCK
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9	Transcription Service:	Peggy Schuerger Ad Hoc Reporting 2220 Otay Lakes Road 10 Suite 502-85 11 Chula Vista, California 91915 12 (619) 236-9325
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1 SAN FRANCISCO, CALIFORNIA FRIDAY, JANUARY 25, 2019 4:25 P.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE CLERK: Calling civil action 15-3226, Neuroth, et
5 al. v. Mendocino County, et al.

6 Counsel, please state your appearances for the record.

7 THE COURT: And the appearances of your clients, too,
8 or the people with settlement authority.

9 MS. SHERWIN: This is Julia Sherwin appearing for
10 Plaintiff James Neuroth, and Mr. Neuroth is also here.

11 THE COURT: Okay. Oh, sorry.

12 MR. BERTLING: This is Pete Bertling for California
13 Forensic Medical Group, and this afternoon I've been conferring
14 with Ben Rice regarding what we are going to be putting on the
15 record this afternoon.

16 THE COURT: And you have settlement authority for the
17 terms we're going to put on the record?

18 MR. BERTLING: Yes, although it is subject, Your Honor,
19 to final approval by the Executive Team at Wellpath.

20 THE COURT: Okay. So we'll say that, too, so I guess
21 subject to contingency approval. That's fine with all that.

22 All right. Next?

23 MS. WINTERS: This is Amy Winters appearing for the City
24 of Willits Defendants, and I have the Chief of Police, Scott
25 Warnock here, who has settlement authority for the terms.

1 THE COURT: Okay. And, finally, for the County of
2 Mendocino.

3 MR. VRANICAR: Michael Vranicar appearing as counsel for
4 the County of Mendocino and the various individuals from the
5 County.

6 MS. BLANTON: And this is Brina Blanton with the County
7 Counsel's Office and I have settlement authority for the terms.

8 THE COURT: Okay. Perfect. All right. So I am going
9 to recite the terms of the settlement agreement and ask the
10 lawyers along the way if I've missed anything and ask the clients
11 if they have settlement authority to accept the terms.

12 One, the parties have for the -- the monetary agreement, the
13 parties have actually executed a written settlement agreement.
14 That written settlement agreement provides for payment by
15 Wellpath, formerly CFMG, and the City of Willits by February 8th.
16 The one issue is, for example, Willits has an insurance carrier,
17 and the idea is everyone will try to make it happen by -- not
18 everyone -- Willits and -- and Wellpath will do their best to make
19 it happen by February 8th and expect that it can. But if it
20 doesn't, will do it as soon as is practicable, work in good faith
21 to make it happen as soon as is practicable after February 8th.

22 Is that fair?

23 (No response.)

24 Okay. Hearing no disagreement.

25 All right. I'm going to go party by party. For the City --

1 and now the parties have also -- and that's been signed and it
2 contains the release, and so that's all taken care of and so
3 that's a contract on its own and that's been approved by
4 everybody.

5 The -- for the non-monetary relief, which is -- has no
6 contingencies from the County's perspective or from the City of
7 Willits' perspective, but which for Wellpath does have the
8 contingency of basically executive management approval, even
9 though Ben Rice, who's in the General Counsel's Office, has been
10 part of this and is a -- and has worked with you and you have, Mr.
11 Bertling, approval authority to accept the terms of the
12 settlement, subject to that contingency of executive approval. Is
13 that correct?

14 MR. BERTLING: Correct, Your Honor. We've obviously
15 been negotiating this in good faith, but it will require approval
16 by the Executive Team and Board at Wellpath, so --

17 THE COURT: Okay. So why don't we start since -- well,
18 since you're -- I'll read the rest of it, but why don't we start
19 with your -- the agreements that you have reached on the non-
20 monetary components for Wellpath subject to that contingency of
21 approval.

22 MS. SHERWIN: And I'll read those, Your Honor, because
23 we've been going back and forth in emails, so I've got it right
24 here.

25 THE COURT: Okay.

1 MS. SHERWIN: CFMG, now known as Wellpath, requires when
2 a registered nurse or higher level caregiver is present in the
3 facility, absent extenuating circumstances, he or she will perform
4 all receiving screens and patient assessments in California.

5 Wellpath has RNs on site 24 hours a day in a majority of the
6 counties it serves in California.

7 Wellpath agrees to continue its practice that RNs or higher
8 level caregivers perform all receiving screenings and all patient
9 assessments whenever possible in California.

10 For the counties with current contracts that do not have RNs
11 on site 24 hours a day, seven days a week, Wellpath has the LVN
12 collect data and call the RN or higher level caregiver to make the
13 decision about the disposition of patients.

14 Plaintiff's counsel has requested, and Wellpath's litigation
15 counsel will recommend, that in those counties in California when
16 an RN is not on site, Wellpath will have the RN speak to the
17 patient by a remote video connection before making a disposition
18 decision for that patient.

19 Wellpath and the County will review the feasibility and cost
20 of using its OneCare Connect video system in those facilities, and
21 it will be subject to the approval of that individual county.

22 Wellpath's counsel will provide Plaintiff's counsel a list
23 of all of the counties in California that have LVNs working
24 without an RN on site during any shift no later than January 30th
25 of 2019.

1 In addition, on the CFMG non-monetary relief, Wellpath will
2 include in its ongoing training to all healthcare personnel in
3 California the dangers of prone maximal restraint and restraint
4 asphyxia as defined on the record in this case, to include
5 restraint asphyxia, compression asphyxia, and positional asphyxia.
6 Wellpath's counsel will provide a copy of the training to
7 Plaintiff's counsel.

8 THE COURT: Okay. All right. Is that fair, Mr.
9 Bertling?

10 MR. BERTLING: Yes, Your Honor. I believe that
11 accurately reflects what we have negotiated in good faith today.

12 THE COURT: Okay. Great. So I'll do the City of
13 Willits next. The parties agree to the following non-monetary
14 relief:

15 The City of Willits is sending Officer Christopher Derosio
16 (ph) to three-day Crisis Intervention Team, also known as CIT
17 training, in February 2019. Also, Derosio will then provide CIT
18 training to all sworn staff and the Community Service Officer.
19 The City's long-term goal is to eventually have every staff member
20 attend the CIT training.

21 The City of Willits has provided body-worn video cameras to
22 all sworn staff. The Chief of Police is working on the video
23 recording policy and will provide the current draft to Plaintiff's
24 counsel. Plaintiff's counsel may provide suggestions for changes
25 to the draft policy, which the Chief of Police will consider.

1 The Court has recommended that the policy have a provision
2 that sworn personnel shall, when practicable, record field
3 contacts with individuals.

4 The City of Willits is currently working on its training
5 outline to the POST-Certified Class for Arrest and Control, and
6 will include training on the dangers of prone or maximal restraint
7 and restraint asphyxia, compression asphyxia, and/or positional
8 asphyxia, which we will identify here under the umbrella of
9 restraint asphyxia in the Perishable Skills Training for officers.

10 Plaintiff's counsel will send the City of Willits' counsel
11 information on restraint, which the Chief of Police will review
12 and consider.

13 Is that -- from the City of Willits' perspective, is that a
14 fair reading of what you guys have negotiated today?

15 MS. WINTERS: Yes. I will just note that it's Crisis
16 Intervention Training, not Team, but that's --

17 THE COURT: Did I say Team? I --

18 MS. WINTERS: It says Team --

19 THE COURT: Okay. That's why I said that. Okay.

20 MS. WINTERS: Yes.

21 MS. SHERWIN: That is correct.

22 THE COURT: Okay. Yes. The idea, of course, is sending
23 the officer to do that crisis intervention training. Okay. All
24 right.

25 So for Mendocino County -- and so you guys read along with

1 me -- Mendocino County will provide a CIT training program for all
2 actively-employed sworn staff of the Mendocino County Sheriff's
3 Office who are not on an extended leave of absence. The program
4 will be completely in place and all training of current employees
5 will be completed no later than January 31st, 2021.

6 Mendocino County will provide training to all sworn staff of
7 the Sheriff's Office who are not on an extended leave of absence
8 on the dangers of compression asphyxia, with training beginning as
9 soon as the training is available, and the training of all current
10 employees being completed no later than January 31, 2021.

11 The County's defense counsel will recommend that new
12 employees will be trained within a reasonable time after their
13 hire. The County's defense counsel will recommend that the County
14 provide refresher CIT training to all sworn staff consistent with
15 generally-accepted CIT training protocols and compression asphyxia
16 training every two years.

17 Did I get that paragraph right?

18 MS. SHERWIN: Yes.

19 MR. VRANICAR: Yes.

20 THE COURT: Okay. And then the second -- then there's
21 more. Mendocino County will report to Plaintiff's counsel in
22 writing on the progress of the non-monetary relief no later than
23 January 31, 2020 and will report to the Court and Plaintiff's
24 counsel in writing on the progress for completion of the non-
25 monetary relief no later than January 31, 2021.

1 Mendocino County -- this is the next provision. Mendocino
2 County now requires that all receiving screenings and patient
3 assessments in jail be performed by registered nurses or higher
4 level caregivers.

5 Sheriff Allman will recommend to the Board of Supervisors for
6 approval that this requirement stay in place for at least the next
7 ten years.

8 Finally, the parties have agreed that the Court -- that's me
9 -- will retain jurisdiction of the case for a period -- the matter
10 for a period of three years to enforce the terms of the settlement
11 agreement which will be the completion of the agreed-upon non-
12 monetary relief because I don't think we anticipate that there's
13 any problems funding the cash payment, but -- and we described
14 that there are two ways to do this. One, you can just consent to
15 my jurisdiction by filing the consent forms because our minute
16 order today will reflect that the case is settled fully, and that
17 means you submit your stipulated dismissal on whatever schedule
18 you want. And the stipulated dismissal must say, for me to retain
19 jurisdiction, "The Court will retain jurisdiction to enforce the
20 terms of the settlement agreement," period, that one line.

21 Alternatively -- and you can do whatever is easier for you
22 -- alternatively, if you just file a stipulated dismissal, it must
23 say, "The parties consent to Magistrate Judge Laurel Beeler's
24 retaining jurisdiction to enforce the terms of the settlement
25 agreement." Either one, but the parties have agreed to that final

1 term.

2 All right. From the lawyers' perspective, have I missed
3 anything?

4 MR. VRANICAR: No.

5 THE COURT: Okay. All right. So, Mr. Neuroth, do you
6 -- and you should speak into the microphone. Mr. Neuroth, do you
7 understand the terms of the settlement that I've just read into
8 the record --

9 MR. NEUROTH: Yes.

10 THE COURT: -- with Ms. Sherwin's help? Do you
11 understand if you accept the terms of the settlement, it ends the
12 case and you can't reopen it?

13 MR. NEUROTH: Yes.

14 THE COURT: Do you accept the terms of the settlement?

15 MR. NEUROTH: Yes.

16 THE COURT: And, Ms. Sherwin, do you join in your
17 client's acceptance?

18 MS. SHERWIN: Yes, Your Honor.

19 THE COURT: All right. So we'll go next just in order
20 around the table. Chief Warnock, do you understand and accept the
21 terms of the settlement?

22 CHIEF WARNOCK: Yes.

23 THE COURT: All right. And Ms. Winters, do you join in
24 your client's acceptance?

25 MS. WINTERS: Yes.

1 THE COURT: All right. And Mr. Bertling, subject to the
2 contingency that we discussed and based on your representation
3 that you otherwise have settlement authority, do you understand
4 and accept the terms of that settlement, subject to that
5 contingency?

6 MR. BERTLING: Yes, Your Honor, with the exception based
7 on what you just said a few moments ago about the Court retaining
8 jurisdiction, --

9 THE COURT: Yes.

10 MR. BERTLING: -- I don't think any of that really
11 applies to CFMG. We're not doing -- I don't think we're required
12 to do any kind of reporting, so I just wanted to make that clear.

13 THE COURT: Right. I guess -- well, I mean, actually
14 -- well, if you breach the terms of the settlement, technically
15 the -- you retain the benefit of it and you tell me -- you don't
16 have to do any reporting. No, you're not going to do anything.
17 But to the extent you have agreements and all of a sudden you said
18 "Pound sand," then otherwise --

19 MR. BERTLING: Oh, no, no, no.

20 THE COURT: Otherwise, Ms. Sherwin would file a separate
21 state court lawsuit and I think you might rather be here.

22 MR. BERTLING: And I don't anti- -- but you -- there was
23 a number of things where the County and Willits have to do certain
24 things as far as reporting.

25 THE COURT: Yes.

1 MR. BERTLING: Okay. I just --

2 THE COURT: I agree. You don't have to do any of that.

3 MR. BERTLING: All right. Thank you.

4 THE COURT: Exactly. It's the Willits' specifically,
5 so I think that the parties do anticipate that I would retain
6 jurisdiction just because there's going to be ongoing stuff. But
7 as soon as you do it, then you're finished and it's all done.

8 MR. BERTLING: So with that caveat, yes, --

9 THE COURT: Okay. Fine.

10 MR. BERTLING: -- I agree.

11 MS. WINTERS: And, Your Honor, if I may, I think the
12 reporting is just for the County, not for -- I think somebody said
13 for Willits, but for the County. Willits does not have any
14 reporting --

15 THE COURT: No, no. The terms are precisely what I read
16 into the record, which will be available on FTR for your --

17 MS. WINTERS: Yes.

18 THE COURT: -- listening pleasure.

19 MS. WINTERS: Thank you.

20 THE COURT: Okay. All right. Okay. So from -- Ms.
21 Blanton and you -- there are no contingencies on the County's end
22 and you have settlement authority; is that correct?

23 MS. BLANTON: Yes, Your Honor.

24 THE COURT: And do you understand and accept the terms
25 of the settlement?

1 MS. BLANTON: Yes.

2 THE COURT: And Mr. Vranicar, do you join in your
3 client's acceptance --

4 MR. VRANICAR: Yes.

5 THE COURT: -- of the settlement? All right. With
6 that, we have a binding and enforceable settlement agreement.
7 Just when do you think you'll get your contingency satisfied on
8 your end, Mr. Bertling?

9 MR. BERTLING: Within the next 30 days.

10 THE COURT: Okay. Okay. That's fine.

11 MS. SHERWIN: That's fine.

12 THE COURT: All right. So that will be a minute order.
13 So we'll go off the record.

14 (Proceedings adjourned at 4:40 p.m.)

15
16 I, Peggy Schuerger, certify that the foregoing is a
17 correct transcript from the official electronic sound recording
18 provided to me of the proceedings in the above-entitled matter.

19
20 _____ February 12, 2019 _____
21 Signature of Approved Transcriber Date

22 Peggy Schuerger
23 Typed or Printed Name

24 **Ad Hoc Reporting**
25 Approved Transcription Provider
for the U.S. District Court,
Northern District of California