UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA Plaintiff, v. **STATE OF RHODE ISLAND** Defendant.	Case No. CA 14-175

UNITED STATES OF AMERICA'S MEMORANDUM IN SUPPORT OF ITS MOTION TO HOLD THE STATE OF RHODE ISLAND IN CONTEMPT OF THE CONSENT DECREE ENTERED APRIL 9, 2014

Seven years ago, the State of Rhode Island willingly entered into a Consent Decree with the United States to remedy violations of Title II of the Americans with Disabilities Act in the State's administration of its employment service system for individuals with intellectual and developmental disabilities ("I/DD"). Among other things, the State agreed to provide services to several hundred Rhode Islanders with I/DD to help them obtain jobs in community settings rather than segregated sheltered workshops. It also promised to provide integrated day services to certain individuals with I/DD. Finally, it agreed to ensure that there would be a sufficient number of agencies and workers to provide these services, and that it would fund the services. This Court entered the Consent Decree on April 9, 2014, and its term runs through June 30, 2024.

The State has not complied with these obligations. The United States has sought for several years to work with the State regarding its noncompliance, to no

avail. The United States asks this Court to hold the State in contempt of the Consent Decree, and order the relief in the accompanying proposed order.

FACTS

I. Background

The integration mandate of Title II requires states to ensure that the services they deliver to people with disabilities are provided in the most integrated setting appropriate to recipients' needs. *Olmstead v. L.C.*, 527 U.S. 581, 596-97 (1999). In 2014, the United States determined that the State was violating the integration mandate and unnecessarily segregating hundreds of Rhode Islanders with I/DD who receive State employment and day services. With respect to employment services, the State was providing services to hundreds of individuals in sheltered workshops. With respect to day services, it was serving over two thousand individuals in facility-based day programs. The United States also determined that the State was placing numerous other individuals with I/DD at risk of segregation.

After the United States issued these findings, the State negotiated and then agreed to terms under which it would remediate its violation. The parties prepared and signed the Consent Decree. On April 8, 2014, the United States filed its Complaint in this matter (ECF No. 1), and the parties together filed a Joint Motion for Entry of Consent Decree (ECF No. 3). On April 9, 2014, this Court granted the joint motion and signed and issued the Consent Decree (ECF No. 5).

II. Relevant Portions of the Consent Decree

In moving for entry of the Consent Decree, the State agreed to four sets of obligations that are pertinent to this Motion.

First, the State agreed to provide Supported Employment Placements to several hundred Rhode Islanders with I/DD. Consent Decree § IV(8). To provide a "Supported Employment Placement," the State must provide employment services to an individual in an integrated employment setting where, among other things, the individual is compensated at or above the minimum wage and can interact with non-disabled peers to the fullest extent possible. *Id.* § V(D). The State agreed to provide such placements to all members of the "Rhode Island Youth Exit Target Population" — that is, to all Rhode Islanders with I/DD who exited Rhode Island high schools during the 2013-14, 2014-15, or 2015-16 school years. *Id.* §§ III(4), IV(8)(a), (b), (d). The State also agreed that over the full term of the Consent Decree, it would provide Supported Employment Placements to 700 members of the "Rhode Island Sheltered Workshop Target Population" — that is, to 700 Rhode Islanders with I/DD who worked in sheltered workshops at any point in the year leading up to the Consent Decree's signing. *Id.* §§ III(1), IV(8)(c), (e)–(l). At least 400 of these 700 "Rhode Island Sheltered Workshop Target Population" members were to receive their placements by January 1, 2021. *Id.* § IV(8)(c), (e)–(i).

Second, the State agreed that it would provide, to any individual with a Supported Employment Placement, a sufficient quantity of "Integrated Day Services" to fill whichever portion of that individual's 40-hour workweek is not devoted to work or school.[1] *Id.* § VI(B). The State also agreed to offer 40 hours of

[1] "Integrated Day Services" are non-employment services that enable individuals with I/DD to participate in community-based recreational, social, educational, cultural, and athletic activities. *Id.* § VI(A).

these services per week to Rhode Islanders with I/DD who received facility-based day services in the year leading up to the Consent Decree's signing and do not want a Supported Employment Placement. *Id.* § VI(B)(10).

Third, the State promised to "ensure that it supports and maintains a sufficient [provider] capacity to deliver Supported Employment and Integrated Day Services to individuals in [the Consent Decree's target populations], including qualified supported employment providers and integrated day providers . . . ." *Id.* § XI(1). Thus, the State agreed not only to achieve the service outcomes set forth in Consent Decree §§ IV and VI, but also committed to ensure sufficient provider capacity as one means of achieving those ends.

Fourth, the State agreed that it would "timely fund the services and supports necessary to comply with this Consent Decree for the eligible members of the" Consent Decree's target populations. *Id.* § XIV(3). Thus again, the State promised that it would achieve the service outcomes of Consent Decree §§ IV and VI through, in part, certain means — here, by providing the necessary funding for Supported Employment Services and Integrated Day Services.

III. The State's Noncompliance

The State is violating each of these obligations.

First, the State is falling well short of its employment placement obligations in Consent Decree § IV(8). According to the State's data report of March 31, 2021 (attached as Exhibit A), the State had provided Supported Employment Placements to only 284 members of the Rhode Island Youth Exit Target Population, and only 260 members of the Rhode Island Sheltered Workshop Target Population. The

State promised in the Consent Decree that by January 1, 2021, it would provide Supported Employment Placements to all members of the Rhode Island Youth Exit Target Population (of whom there are 449), and to 400 members of the Rhode Island Sheltered Workshop Target Population. For each metric, the State was short of these placement obligations by more than 30 percent each, three months beyond the obligations' deadline.

Placements	**Youth Exit Target Population**	**Sheltered Workshop Target Population**
Promised in Consent Decree by 1/1/2021	449	400
Provided as of 3/31/2021	284	260
Shortfall as a Percentage	36.7%	35.0%

See Exhibit A; Consent Decree § IV(8).

Second, the State is also not meeting its commitment to provide Integrated Day Services to all target population members who have received Supported Employment Placements. *See* Monitor Report: Status of Capacity to Meet Requirements of Consent Decree, Compliance with Court Orders (June 4, 2021) (ECF No. 140). The Monitor's report shows that as of this spring, "only 55% of the Consent Decree adult populations were participating in integrated community activities for an average of 9.48 hours per week," and "only a small fraction of the Consent Decree populations are participating in combined integrated employment and community activities for more than 20 hours per week." *Id.* at 1.

Third, the Monitor has repeatedly found the State to be in violation of the provider capacity provisions of the Consent Decree § XI(1). As the Monitor's June 4, 2021 report states, the State's providers of supported employment services and integrated day services have a staffing shortfall of over 1,000 staff members compared to how many are necessary for the State to achieve the Consent Decree's service obligations. *Id.* at 2; *see also* Monitor Report in Response to February 3, 2020 Order at 36-37 (filed Oct. 7, 2020) (ECF No. 114).

Fourth, the Monitor has determined that the State is not complying with its obligation to "timely fund the services and supports necessary to comply with this Consent Decree . . . ." *Id.* § XIV(3). As he stated in his August 31, 2020 report, "[L]imitations in the State's capacity to fully comply with the Consent Decree is, at least partially, connected to the underfunding of the Developmental Disability System. [A State-commissioned] report documents the fiscal instability of the providers and of the system. Every stakeholder group . . . identified additional funding as a need and insufficient funding as a barrier." *Id.* at 40. The reports of the Monitor's consultants provide further analysis regarding the State's failure to fund its services sufficiently.

The United States may submit additional evidence of these violations at the Court's October 2021 evidentiary hearing.

ARGUMENT

I. Standard for Contempt

"[A] motion for contempt is the proper way to seek enforcement of a consent decree." *Hawkins v. Dep't of Health & Hum. Servs. for N.H., Com'r*, 665 F.3d 25, 30

(1st Cir. 2012). A party should be held in civil contempt if clear and convincing evidence shows that (1) it "had notice of the order," (2) "the order was clear and unambiguous," (3) the party "had the ability to comply with the order,"[2] and (4) the party "violated the order." *Rodriguez-Miranda v. Benin*, 829 F.3d 29, 46 (1st Cir. 2005) (quotation marks omitted). The alleged contemnor's intent is not relevant. *See McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949). "An act does not cease to be a violation of . . . a decree merely because it may have been done innocently." *Id.*

"The alleged contemnor bears the burden of production in defending a contempt motion based on inability to comply with the terms of the order in question." *United States v. Puerto Rico*, 642 F.3d 103, 108 n.8 (1st Cir. 2011) (citing *United States v. Rylander*, 460 U.S. 752, 757 (1983)). Even if an alleged contemnor shows that it made good faith efforts to comply before falling short, it should nevertheless be held in contempt. *In re Power Recovery Sys.*, 950 F.2d 798, 803-84 (1st Cir. 1991). Good faith efforts are not sufficient; rather, to meet its burden, the alleged contemnor must prove that it fell short despite "all reasonable efforts" to comply. *Id.*

The State unquestionably had notice of the Consent Decree and all of its obligations: It signed it and moved the Court for its entry. In addition, throughout the seven years in which the State has been operating under the Consent Decree's

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[2] As explained below, the alleged contemnor bears an initial burden of production on this prong and must first make out a prima facie case in order to necessitate a merits analysis.

terms, the State has never expressed any lack of clarity about its obligations to provide services, ensure provider capacity, or fund the services. Therefore, the merits of this Motion turn on two simple questions. Did the State violate a term of the Consent Decree, and did it have the ability to comply with that term?

II. The State Is In Violation of the Clear and Unambiguous Provisions of the Consent Decree.

The State's violation of the first Consent Decree provision addressed in this Motion is conclusively established by objective numerical data, including data produced by the State itself. As explained above, the State was required, by January 1, 2021, to provide Supported Employment Placements to 449 Youth Exit Target Population members and 400 Sheltered Workshop Target Population members, and it has fallen more than 30 percent short of each obligation.

As set forth in the Monitor's compliance reports, the State is also in violation of the remaining Consent Decree provisions addressed in this Motion, §§ VI(B), XI(1), and XIV(3). As detailed above, the Monitor has found that few target population members are receiving integrated day services, either in the quantity or with the characteristics required by Consent Decree, thus violating § VI(B). The Monitor has also found that the capacity of Supported Employment Services and Integrated Day Services available within the State's service system falls far short of that needed to achieve the Consent Decree's service obligations. Likewise, the Monitor has determined that the State is not funding these services to a level sufficient to achieve its service obligations. The record establishing these violations will be further developed when the Monitor and his experts testify at the October

2021 evidentiary hearing regarding the methodologies they used to reach these findings. The United States will also introduce supplemental evidence at that time supporting the Monitor's conclusions that the State is violating each of these provisions.

As the State is not complying with these Consent Decree provisions, it should be permitted to escape contempt only if it can establish that it made "all reasonable efforts" (and not merely good faith efforts) to comply, and that compliance was not achieved only because the State was unable to comply. As the State has a burden of production on this issue, *Puerto Rico*, 642 F.3d at 108 n.8, the United States proposes to address this issue in a reply brief or in post-hearing briefing, to the extent that the State raises this argument. Fact and expert discovery on the State's ability to comply is ongoing, but in broad terms, if the State attempts to make a prima facie case, then the United States will seek to show that the State did not sufficiently fund the activities required by the Consent Decree, that the State failed even to ask its Legislature for a sufficient appropriation, and that the State failed to make efficient use even of the resources it had — for example, by failing to modify State rules and incentives that favor providers of less integrated services over providers of more integrated services.

III. Remedies

"Civil contempt is a forward-looking penalty meant to coerce compliance rather than to punish past noncompliance. There is no dichotomous split between coercion and punishment, however, and a civil contempt sanction may evidence a punitive flavor." *AngioDynamics, Inc. v. Biolitec AG*, 780 F.3d 420, 426 (1st Cir.

2015) (district court acted well within its discretion in imposing a prospective, conditional fine on a defendant to coerce its compliance). "[A] district court may also utilize sanctions to compensate the complainant for harms suffered as a result of the contempt and to reinforce the court's own authority." *Id.* Civil contempt remedies are appropriate when consistent with these "twin goals" of coercion and compensation. *See NLRB v. Flores*, No. 07-2003, 2012 U.S. App. LEXIS 26981, at *29 (1st Cir. Aug. 6, 2012).

The United States seeks contempt remedies, set forth in the accompanying proposed order, that would advance these two goals. The United States first requests that the Court impose a reasonable fine on the State to incentivize it to rapidly come back into compliance with the Consent Decree, and to compensate for the State's current underfunding of services. The State would be required to deposit these monies into a specific fund to be used exclusively for Consent Decree compliance activities. To ensure that the State does not pay these fines by shifting resources in a manner that improves its performance under the Consent Decree only at the cost of harming Rhode Islanders with disabilities in other ways, the United States proposes that the State be prohibited from paying the fines using monies that would otherwise have been used to serve Rhode Islanders with disabilities. To further incentivize progress toward compliance, the United States proposes that the State be permitted to seek a reduction in fines to the extent that the State reduces its noncompliance with Consent Decree §§ IV(8) and VI(B).

The United States also requests that the Court order the State to prepare a document detailing the steps it promises to take and the funds it promises to expend to come into compliance before the Consent Decree's term ends. As stated in the proposed order, the United States proposes that the Monitor and the United States be given the opportunity to suggest edits to the document, and that the State be required, for each suggested edit, either to incorporate it or to explain why it has not done so. Finally, the United States proposes that the State be ordered to file the document with the Court, and that the State's fines be further reduced if it does so. This remedial measure would further compel the State to come into compliance with the Consent Decree.

Evidence that the Monitor and parties will present at the October 2021 hearing will further support the record pertinent to the United States' requested relief. The United States requests the opportunity to revise its proposed relief at that time to add more detail and tie it specifically, with citations, to the record presented at the hearing.

CONCLUSION

For these reasons, the United States of America respectfully requests that the Court grant this Motion to Hold the State of Rhode Island in Contempt of the Consent Decree Entered April 9, 2014, and command the relief set forth in the accompanying proposed order. The United States respectfully suggests that after the evidentiary hearing scheduled for October 18-22, 2021, the Court direct the parties to file proposed findings of fact and conclusions of law synthesizing evidence

introduced at the hearing, and to add further detail to any proposed remedies based on this evidence.

Dated: August 16, 2021

Respectfully submitted,

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