

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NORTH CAROLINA,

Defendant.

Case No. 5:12-cv-557-F

**UNITED STATES' MEMORANDUM IN SUPPORT OF ITS
MOTION TO ENFORCE SETTLEMENT AGREEMENT**

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NATURE OF THE CASE

Four years ago, the State of North Carolina (the “State”) and the United States entered into a court-enforceable settlement agreement (the “Agreement”) to resolve allegations that the State unnecessarily segregates thousands of individuals with serious mental illness in adult care homes, in violation of Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132. The State has repeatedly failed to comply with its annual obligations under the Agreement, lagging far behind schedule. As a result, halfway through the eight-year Agreement, hundreds of North Carolinians remain unnecessarily segregated in adult care homes. Judicial intervention is necessary to remedy the State’s noncompliance with the Agreement.

Title II prohibits disability-based discrimination, including unnecessary segregation, and requires North Carolina to administer its services, programs, and activities, including its mental health service system, in the most integrated setting appropriate to individuals with disabilities. *See id.*; *Olmstead v. L.C.*, 527 U.S. 581 (1999); 28 C.F.R. § 35.130(d). The most integrated setting is one that enables individuals with disabilities to interact with nondisabled individuals to the fullest extent possible. 28 C.F.R. pt. 35, app. B at 685 (2015) (addressing § 35.130).

The Agreement arose out of findings of the United States, following an investigation, that North Carolina administers its mental health service system in a manner that unnecessarily segregates thousands of individuals with mental illness in large, institutional adult care homes in violation of the ADA. The United States found that adult care homes are institutional settings that segregate residents from the community and impede their interactions with individuals who do not have disabilities. The United States further found that most individuals with mental illness could, and would prefer to, receive services in community-based settings and that community-based housing is more cost-effective than institutionalization.

To resolve the United States’ investigation, the State committed to expanding its community-based services for thousands of individuals with serious mental illness who are in or at risk of entry to adult care homes (the “target population”). *See* Settlement Agreement, Aug. 23, 2012, D.E. 2-2 [“S.A.”]. The Agreement requires the State to modify its mental health service system, including increasing its capacity to provide integrated services such as supported housing and supported employment to individuals in the target population. The State must modify its supported housing system—i.e., permanent housing with supports that enable residents to attain and maintain stable housing in the community—by providing access to 3,000 “Housing Slots” according to a schedule of annual obligations. *Id.* § III(B). The State must also provide “Supported Employment Services,” which allow individuals to secure and maintain integrated employment, to 2,500 target population members according to a schedule of annual obligations. *Id.* § III(D).

The State’s reports demonstrate that North Carolina has failed to comply with the Agreement. The Agreement requires the State to provide 1,166 Housing Slots by July 1, 2016, *id.* § III(B)(3)(d); yet only 650 individuals occupied Housing Slots on June 30, 2016. The Agreement also requires the State to provide Supported Employment Services to 1,166 individuals in the target population by July 1, 2016, *id.* § III(D)(3); yet only 708 individuals were receiving those services on June 30, 2016.

Confronted with a growing gap between its performance and its obligations, the State has attempted to unilaterally redefine its obligation to provide 3,000 Housing Slots. The State initially reported on compliance with its housing obligations by counting only occupied Housing Slots, consistent with the Agreement and with the parties’ intent. More than two and a half years into implementation, however, the State began reporting on compliance by counting both

occupied and vacant Housing Slots, thereby misstating the number of individuals afforded the relief required by the Agreement.

The State has also attempted to unilaterally redefine its obligation to provide Supported Employment Services to 2,500 individuals in the target population. The State initially reported on compliance with its employment services obligations by counting only individuals in the target population receiving Supported Employment Services, consistent with the Agreement and with the parties' intent. More than three years into implementation, however, the State began asserting that providing Supported Employment Services to anyone, regardless of whether they are in the Agreement's target population, satisfies this obligation.

The State's new interpretations dilute the Agreement's housing and employment services requirements. Under its interpretation, the State could claim compliance even if no one occupies a Housing Slot at the conclusion of the Agreement. Similarly, the State could claim compliance even if no one in the target population receives Supported Employment Services.

The State's new interpretations run contrary to the terms of the Agreement and the parties' intent. The only reasonable interpretation of the housing provisions requires the State to count only individuals residing in permanent supported housing. And the only reasonable interpretation of the employment services provisions requires the State to serve individuals in the target population. Moreover, the State's conduct prior to this dispute belies the validity of its new interpretations. During the first several years of implementation, the State reported on compliance by counting only occupied Housing Slots and by counting only individuals in the target population receiving Supported Employment Services.

The State's changed position denies thousands of individuals with serious mental illness access to the supported housing and supported employment required by the Agreement. Judicial

enforcement of the Agreement is necessary to remedy the State's ongoing noncompliance and increase the likelihood that the State will achieve compliance for the remainder of the Agreement.

STATEMENT OF FACTS

I. BACKGROUND AND PROCEDURAL HISTORY

The United States began investigating North Carolina's mental health service system on November 17, 2010 and issued a letter detailing its findings on July 28, 2011. Complaint ¶ 49, Aug. 23, 2012, D.E. 1; Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. DOJ, to Roy Cooper, Att'y Gen., N.C. DOJ (July 28, 2011) Ex. A ["Letter of Findings"]. The United States concluded that the State fails to provide services to individuals with mental illness in the most integrated setting appropriate to their needs as required by the ADA. *See* Letter of Findings Ex. A, at 1; *see also* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d). The State plans, administers, and funds its mental health service system in a manner that unnecessarily segregates individuals with mental illness in institutional adult care homes, rather than providing services to them in community-based settings. *See* Letter of Findings Ex. A, at 1; *see also* 28 C.F.R. § 35.130(b) and (d). As a result, thousands of individuals with mental illness, who could be served in the community with the types of services and supports that exist in North Carolina's mental health service system, are needlessly institutionalized.

The Letter of Findings identified remedial measures necessary to resolve the violations of federal law. *See* Letter of Findings Ex. A, at 14–15. These measures included increasing the capacity of supported housing, a service that enables individuals to live in integrated, community settings that are generally more cost effective than segregated adult care homes. *See id.* The Letter of Findings also proposed expanding the capacity of other services that enable individuals to live in the community, including supported employment, assertive community treatment, case

management, and crisis services. *Id.* The parties negotiated an eight-year settlement agreement that includes the remedial measures discussed in the Letter of Findings. *See* Settlement Agreement, Aug. 23, 2012, D.E. 2-2 [“S.A.”].

On August 23, 2012, the United States filed a complaint for declaratory and injunctive relief. Compl. The Complaint alleged that the State has failed to serve individuals with serious mental illness in the most integrated setting appropriate to their needs, in violation of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. *Id.* ¶¶ 1–3. On the same day, the parties filed a joint motion to dismiss the Complaint without prejudice under Federal Rule of Civil Procedure 41(a)(2) and retain jurisdiction to enforce the Agreement. D.E. 2. On October 5, 2012, the Court conditionally dismissed the Complaint and retained jurisdiction to enforce the Agreement. D.E. 13.

II. PERTINENT TERMS OF THE SETTLEMENT AGREEMENT

The Agreement provides relief to individuals with serious mental illness who are in or at risk of entry to an adult care home. S.A. § III(A). The Agreement’s stated purpose is to ensure that “community integration and self-determination will be achieved.” *See id.* § I(C). To that end, the State agreed to modify its service system to prevent inappropriate institutionalization and to provide adequate community-based services and supports to meet the needs of individuals with serious mental illness who are in or at risk of entry to an adult care home.¹ *See id.* § III(A).

¹ The Agreement requires that the State increase its capacity to provide an array of services to avoid unnecessary institutionalization and to achieve community integration. *See* S.A. § III(A). These services include, but are not limited to, community-based mental health services, *id.* § III(C); discharge and transition services, including educating individuals about community-based services and supports, *id.* § III(E); and pre-admission screening and diversion services, *id.* III(F). The Agreement also obligates the State to implement quality assurance and performance improvement measures. *Id.* § III(G). The United States’ motion does not seek to enforce or otherwise take a position on whether the State is in compliance with any or all of these provisions.

One such community-based service is supported housing, i.e., permanent housing with supports that enable residents to attain and maintain housing in the community.² *See id.* § III(B)(1). The Agreement requires the State to increase its supported housing capacity by “provid[ing] access to 3,000 Housing Slots.” *Id.* § III(B)(3). “Housing Slots” are “State or federal housing vouchers and/or rental subsidies for community-based supported housing” that include “a package of tenancy support, transition support and rental support.” *Id.* § II(A). In short, a Housing Slot combines permanent housing with tenancy support services that enable an individual to “maintain integrated, affordable housing.” *Id.* § III(B)(7)(a)–(b). Annual, incremental obligations dictate the pace at which the State must increase its capacity to provide Housing Slots.³ *Id.* § III(B)(3). By July 1, 2016, the State must have the systemic capacity to provide 1,166 Housing Slots. *Id.* § III(B)(3)(d).

The Agreement also requires the State to provide Supported Employment Services to individuals in the target population. *Id.* § III(D). Supported Employment Services are services that help individuals prepare for, identify, and maintain integrated, competitive employment. *Id.* § III(D)(1). Annual, incremental obligations dictate the pace at which the State must increase its

² Supported housing restores the personal freedoms and individuality that residents often lose in adult care homes. It “afford[s] individuals choice in their daily life activities, such as eating, bathing, sleeping, visiting and other typical daily activities.” S.A. § III(B)(7)(f). For example, it allows them to access community activities, cook meals, and entertain guests at times, frequencies, and with persons of their choosing. *See id.* § III(B)(7). Moreover, supported housing allows residents to participate in society alongside individuals without disabilities.

³ Section III(B)(3) provides that:

The State will provide access to 3,000 Housing Slots in accordance with the following schedule:

- a. By July 1, 2013 the State will provide Housing Slots to at least 100 and up to 300 individuals.
- b. By July 1, 2014 the State will provide Housing Slots to at least 150 additional individuals.
- c. By July 1, 2015 the State will provide Housing Slots to at least 708 individuals.
- d. By July 1, 2016 the State will provide Housing Slots to at least 1,166 individuals.
- e. By July 1, 2017 the State will provide Housing Slots to at least 1,624 individuals.
- f. By July 1, 2018 the State will provide Housing Slots to at least 2,082 individuals.
- g. By July 1, 2019 the State will provide Housing Slots to at least 2,541 individuals.
- h. By July 1, 2020 the State will provide Housing Slots to at least 3,000 individuals.

capacity to provide Supported Employment Services.⁴ *See id.* § III(D)(3). By July 1, 2016, the State must have the systemic capacity to provide Supported Employment Services to 1,166 individuals in the target population. *Id.*

III. THE STATE'S SHIFTING INTERPRETATIONS OF THE AGREEMENT'S HOUSING AND EMPLOYMENT SERVICES REQUIREMENTS

A. Housing Requirements

From the Agreement's inception through July 2014, the State, consistent with the Agreement, reported its progress toward compliance with section III(B)(3) as the number of individuals occupying Housing Slots on the reporting dates. For example, the State's first four monthly reports identified the net number of individuals "In Housing with Confirmed Lease" in a summary table."⁵ July 2014 Monthly Rep. (Aug. 25, 2014) Ex. B, at 2; June 2014 Monthly Rep. (undated) Ex. C, at 1; May 2014 Monthly Rep. (undated) Ex. D, at 1; April 2014 Monthly Rep. (undated) Ex. E, at 1. Each of these reports included a graph reflecting the number of individuals currently in housing. July 2014 Monthly Rep. Ex. B, at 5 (Fig. C); June 2014 Monthly Rep. Ex. C, at 8 (Fig. 3); May 2014 Monthly Rep. Ex. D, at 4 (Fig. 3); April 2014 Monthly Rep. Ex. E, at 5 (Fig. 3). The State also reported the net gain in individuals housed. July 2014 Monthly Rep. Ex. B, at 6 (Fig. D); June 2014 Monthly Rep. Ex. C, at 9 (Fig. 4). In short, the State accounted for turnover each month, counting only occupied Housing Slots. *See* July 2014 Monthly Rep.

⁴ Section III(D)(3) provides that:

By July 1, 2013, the State will provide Supported Employment Services to a total of 100 individuals;
[B]y July 2, 2014, the State will provide Supported Employment Services to a total of 250 individuals;
[B]y July 1, 2015, the State will provide Supported Employment Services to a total of 708 individuals;
[B]y July 1, 2016, the State will provide Supported Employment Services to a total of 1,166 individuals;
[B]y July 1, 2017, the State will provide Supported Employment Services to a total of 1,624 individuals;
[B]y July 1, 2018, the State will provide Supported Employment Services to a total of 2,082 individuals;
and
[B]y July 1, 2019, the State will provide Supported Employment Services to a total of 2,500 individuals.

⁵ In April 2014, at the United States' request, the State began providing monthly reports on its progress toward compliance with the Agreement's housing and employment services requirements.

Ex. B, at 2 (reporting compliance as 260 individuals after factoring in turnover of four individuals); May 2014 Monthly Rep. Ex. D, at 1 (reporting compliance as 237 individuals after factoring in turnover of one individual); *see also infra* Argument I(A)(2) (detailing how State accounted for turnover).

The State shifted its reporting practices in August 2014. In addition to reporting the number of occupied Housing Slots, the State added a column labeled “total” to the summary table. Aug. 2014 Monthly Rep. (Sept. 25, 2014) Ex. F, at 3. This column appears to represent the total number of occupied and vacant Housing Slots.⁶ *See id.*

Beginning in January 2015, two and a half years into implementation, the State ceased reporting its progress as the number of individuals occupying Housing Slots. Jan. 2015 Monthly Rep. (Feb. 25, 2015) Ex. G, at 2. Instead of reporting two numbers for housing in the summary table, the State began reporting only the combined number of occupied and vacant Housing Slots. *Id.*

Supported Housing Obligations: Summary of the State’s Reporting		
Monthly Report	Number of Occupied Housing Slots	Number of Occupied + Vacant Housing Slots
April 2014	Reported (228)	Not Reported
May 2014	Reported (237)	Not Reported
June 2014	Reported (254)	Not Reported
July 2014	Reported (260)	Not Reported
August 2014	Reported (263)	Reported (303)
September 2014	Reported (273)	Reported (317)
October 2014	Reported (286)	Reported (330)
November 2014	Reported (302)	Reported (352)

⁶ The term “vacant Housing Slot,” as used in this memorandum, indicates that a Housing Slot recipient has left his or her integrated, community-based housing placement, and the Housing Slot has not been reassigned to an individual on the wait list.

December 2014	Reported (317)	Reported (375)
January 2015	Not Reported	Reported (403)
February 2015	Not Reported	Reported (426)
March 2015	Not Reported	Reported (451)

On March 17, 2015, the United States advised the State that the appropriate measure of compliance is the number of individuals occupying Housing Slots on the given compliance dates. *See* Letter from Nicholas Lee et al., Trial Att’ys, U.S. DOJ, to Lisa Corbett, Asst. Gen. Counsel, N.C. Dep’t of Health & Human Servs. (Mar. 17, 2015) Ex. H. The State took the contrary position that any individual to whom the State has provided a Housing Slot, including those who have since vacated their Housing Slots, counts toward section III(B)(3)’s requirements. *See* Letter from Lisa Corbett to Nicholas Lee (June 29, 2015) Ex. I, at 2.

B. Employment Services Requirements

During the first three years of implementation, the State repeatedly referred to the target population—i.e., individuals with serious mental illness who are in or at risk of entry to an adult care home—when describing its employment services obligations. It also reported its progress toward compliance with section III(D)(3) as the number of individuals in the target population receiving Supported Employment Services on the reporting dates. The State subsequently changed tack, asserting that anyone receiving Supported Employment Services counts toward section III(D)(3)’s requirements, including individuals outside the target population.⁷ *See* Letter from Emery Milliken, Gen. Counsel, N.C. Dep’t of Health & Human Servs., to Nicholas Lee (May 27, 2016) Ex. J, at 2 [“May 2016 Letter from N.C.”].

⁷ The State has not identified to whom outside the target population it is providing Supported Employment Services. Nevertheless, the State’s monthly reports reveal that it is providing Supported Employment Services to both target population and non-target population members.

IV. THE STATE'S FAILURE TO PROVIDE REQUIRED HOUSING AND EMPLOYMENT SERVICES

The State failed to meet its July 2015 obligations to provide 708 Housing Slots and to provide Supported Employment Services to 708 individuals in the target population. Only 417 Housing Slots were occupied on June 30, 2015. *See* June 2015 Monthly Rep. (July 27, 2015) Ex. K, at 6. And only 304 individuals in the target population were receiving Supported Employment Services on August 31, 2015.⁸ *See* Aug. 2015 Monthly Rep. (Sept. 30, 2015) Ex. L, at 2.

On November 6, 2015, the United States requested a corrective action plan pursuant to section V. Letter from Nicholas Lee et al. to Roy Cooper and Richard Brajer (Nov. 6, 2015) Ex. M. On December 22, 2015, the State provided the United States with a corrective action plan (the "Plan"). Letter from Richard Brajer to Nicholas Lee (Dec. 22, 2015) Ex. N. The United States rejected the Plan as inadequate and proposed that the State revise the Plan. *See* Letter from Nicholas Lee to Roy Cooper and Richard Brajer (Mar. 24, 2016) Ex. O. The State's revised corrective action plan was also inadequate. *See* Letter from Teresa Yeh et al. to Roy Cooper and Richard Brajer (Oct. 21, 2016) Ex. P.

On July 1, 2016, the State again fell far short of its obligations, providing only 650 of the required 1,166 Housing Slots and providing Supported Employment Services to only 708 of the required 1,166 individuals from the target population.⁹ *See* June 2016 Monthly Rep. (July 28, 2016) Ex. Q, at 2, 7. Notably, the State's failure to meet its obligations was not due to a lack of demand for Housing Slots. *See N.C. Supportive Housing Corrective Action Plan* (June 3, 2016)

⁸ The State did not report on supported employment in its June 2015 Monthly Report because the State was in the process of "actively validating persons served to assess if all individuals reported meet the in or at risk definition for supported employment." June 2015 Monthly Rep. Ex. K, at 2.

⁹ As of the most recent monthly report, the State remains noncompliant with its July 2016 obligations. November 2016 Monthly Rep. (Dec. 29, 2016) Ex. S, at 2, 6 (reporting 843 individuals in Housing Slots and 842 individuals receiving Supported Employment Services).

Ex. R, at 3 (reporting that as of May 2016, 354 individuals had received a Housing Slot but had not transitioned).

LEGAL STANDARD

I. SUMMARY ENFORCEMENT OF SETTLEMENT AGREEMENTS

District courts have the inherent authority to enforce settlement agreements. *Hensley v. Alcon Labs., Inc.*, 277 F.3d 535, 540 (4th Cir. 2002). Jurisdiction arises when the “obligation to comply with the terms of the settlement agreement [is] made part of an order of dismissal . . . [by] a provision ‘retaining jurisdiction’ over the settlement agreement.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994). In such instances, “a breach of the agreement would be a violation of the order,” and a court has jurisdiction to enforce the agreement. *Id.* A court may summarily enforce a settlement agreement without a plenary evidentiary hearing when it finds that the parties reached a complete agreement with terms that the court is able to determine. *See Hensley*, 277 F.3d at 540–41.

The remedy for noncompliance with a settlement agreement is specific performance. *See U.S. ex rel. McDermitt, Inc. v. Centex-Simpson Constr. Co.*, 34 F. Supp. 2d 397, 399 (N.D. W. Va. 1999) (“A motion to enforce a settlement agreement is an action for specific enforcement of a contract.”), *aff’d sub nom. United States v. Centex-Simpson Constr.*, 203 F.3d 824 (4th Cir. 2000); *Clayton v. Ameriquest Mortg. Co.*, No. 1:02CV415, 2004 WL 734978, at *3 (M.D.N.C. Apr. 5, 2004), *aff’d*, 117 F. App’x 301 (4th Cir. 2004).

II. PRINCIPLES OF INTERPRETATION

Courts apply standard contract principles when interpreting settlement agreements. *See Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 F.3d 177, 211 (4th Cir. 2009); *Hensley*, 277 F.3d at 540; *Harris v. Ray Johnson Constr. Co.*, 139 N.C. App. 827, 829, 534 S.E.2d 653, 654 (2000). In interpreting an agreement, a court’s principal objective is to determine the intent of

the parties at the time they made the agreement. *See Med. Mut. Ins. Co. of N.C. v. Am. Cas. Co. of Reading, Pa.*, 721 F. Supp. 2d 447, 452 (E.D.N.C. 2010); *Renfro v. Richardson Sports Ltd.*, 172 N.C. App. 176, 198, 616 S.E.2d 317, 333 (2005).

Where the language of an agreement is unambiguous, a court derives the parties' intent from the words of the contract. *See Crain v. DeBartolo*, No. 7:14-CV-29-D, 2015 WL 73961, at *2 (E.D.N.C. Jan. 6, 2015); *State v. Philip Morris USA Inc.*, 359 N.C. 763, 618 S.E.2d 219, 225 (2005). Ambiguity exists "only where contractual language is capable of two *reasonable* interpretations." *Silicon Image, Inc. v. Genesis Microchip, Inc.*, 271 F. Supp. 2d 840, 850 (E.D. Va. 2003); *see Johnson v. Am. United Life Ins. Co.*, 716 F.3d 813, 820 (4th Cir. 2013); *Glover v. First Union Nat'l Bank*, 109 N.C. App. 451, 456, 428 S.E.2d 206, 209 (1993).

In determining reasonableness, courts examine the context and purpose of the contracting parties. *See Silicon Image*, 271 F. Supp. 2d at 851 ("[T]o interpret disputed contract terms, the context and intention [of the parties] are more meaningful than the dictionary definition." (quotations omitted)); *Fulford v. Jenkins*, 195 N.C. App. 402, 408–09, 672 S.E.2d 759, 763 (2009). Courts interpret an agreement's language "in the light of all the circumstances, and if the principal purpose of the parties is ascertainable it is given great weight." Restatement (Second) of Contracts § 202(1) (1981); 5 Arthur L. Corbin, *Corbin on Contracts* § 24.20 (Rev. ed. 2002) ("When the principal purpose of the parties becomes clear, further interpretation should be guided thereby."). In short, a court will interpret an agreement "to effectuate its spirit and purpose." *Silicon Image*, 271 F. Supp. 2d at 851 (quotations omitted).

Moreover, "intent is derived not from a particular contractual term but from the contract as a whole." *Crain*, 2015 WL 73961, at *2 (quotations omitted); *see Johnson*, 716 F.3d at 820; *Lynn v. Lynn*, 202 N.C. App. 423, 435, 689 S.E.2d 198, 207 (2010); Restatement § 202(2) ("A

writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together.”).

Where the language of an agreement is ambiguous, a court turns to extrinsic evidence to determine the parties’ intent. *See Silicon Image*, 271 F. Supp. 2d at 850. Courts “give consideration to evidence of the parties’ own interpretation of the contract prior to the controversy.” *Bicket v. McLean Sec., Inc.*, 138 N.C. App. 353, 361–62, 532 S.E.2d 183, 188 (2000); *Cent. Tel. Co. of Va. v. Sprint Commc’ns Co. of Va.*, 715 F.3d 501, 517 (4th Cir. 2013). The manner in which the parties have carried out the terms of an agreement since its execution is indicative of how the parties construe the terms. *See Crowder Constr. Co. v. Kiser*, 134 N.C. App. 190, 200–01, 517 S.E.2d 178, 186 (1999). Accordingly, course-of-conduct evidence is “deemed to be of great, if not controlling, influence.” *See Mgmt Sys. Assocs., Inc. v. McDonnell Douglas Corp.*, 762 F.2d 1161, 1171–72 (4th Cir. 1985) (quotations omitted); *Preyer v. Parker*, 257 N.C. 440, 446, 125 S.E.2d 916, 920 (1962).

ARGUMENT

Court enforcement of the Agreement is necessary to rectify the State’s ongoing noncompliance.¹⁰ For two consecutive years, the State has failed to meet its housing obligations under section III(B)(3). Only 650 of the 1,166 required Housing Slots were occupied on June 30, 2016. *See* June 2016 Monthly Rep. Ex. Q, at 7. The State has never substantially complied with its employment services obligations under section III(D)(3). Only 708 individuals from the

¹⁰ The Court has jurisdiction to enforce the Agreement. D.E. 13; *Kokkonen*, 511 U.S. at 381 (holding jurisdiction arises when settlement is made part of order “retaining jurisdiction”); *Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co.*, 203 F.3d 291, 299 (4th Cir. 2000) (holding order stating “[t]he Court retains jurisdiction to enforce the settlement of the parties” satisfies *Kokkonen*). Furthermore, summary enforcement of the Agreement is appropriate since the parties jointly filed a complete agreement with the Court, *see* D.E. 2 & 2-2, and the Court is able to determine the Agreement’s terms, *see Hensley*, 277 F.3d at 540–41.

target population of the 1,166 required were receiving Supported Employment Services on June 30, 2016. *See id.* at 2.

Although the State has attempted to diminish its obligations by redefining how to measure compliance with sections III(B)(3) and III(D)(3), its new interpretations run contrary to the parties' intent. The Agreement's language is unambiguous: only occupied Housing Slots count toward compliance with section III(B)(3), and only individuals in the target population receiving Supported Employment Services count toward compliance with section III(D)(3). Furthermore, the way in which the State executed the Agreement during the first several years of implementation confirms that it understood that the parties intended to measure compliance in this manner. The Court should reject the State's attempt to sidestep its obligations and order the State to take the actions described in the proposed order.

I. THE STATE MISCONSTRUES AND FAILS TO COMPLY WITH THE AGREEMENT'S HOUSING REQUIREMENTS

Although the State attempts to measure compliance by counting both occupied and vacant Housing Slots, the State's interpretation contradicts the parties' intent. Based on the Agreement's language and the State's prior conduct, the only reasonable interpretation is to count only occupied Housing Slots toward compliance with section III(B)(3). Under either party's interpretation, the State has failed to meet its July 2016 housing obligation.

A. The Parties Intended to Measure Compliance with Section III(B)(3) by Counting Only Occupied Housing Slots on Given Compliance Dates.

1. The Agreement's Language Is Unambiguous.

The language of the Agreement makes clear that the parties intended to measure compliance with section III(B)(3) by counting only individuals occupying Housing Slots on given compliance dates. *See Silicon Image*, 271 F. Supp. 2d at 851 ("The contract must be

considered as a whole and interpreted to effectuate its spirit and purpose, giving reasonable meaning to all parts.”).

Section III(B)(3) states:

The State will provide access to 3,000 Housing Slots in accordance with the following schedule: . . .

- d. By July 1, 2016 the State will provide Housing Slots to at least 1,166 individuals.
- . . .
- h. By July 1, 2020 the State will provide Housing Slots to at least 3,000 individuals.

S.A. § III(B)(3)(d), (h). Housing Slots are “State or federal housing vouchers and/or rental subsidies for community-based supported housing.”¹¹ *Id.* § II(A). They must be used to secure “permanent housing” and must include “tenancy supports services that enable residents to attain and maintain integrated, affordable housing.” *Id.* § III(B)(7)(a)–(b). The Agreement further provides that “[t]he goal of the State’s system will be that . . . services and supports funded by the State are of good quality and are sufficient to help individuals achieve increased independence, gain greater integration into the community, [and] obtain and maintain stable housing[.]” *Id.* § III(G)(1). The Agreement’s intended outcomes include “increased integration, stable integrated housing, and decreased [] institutionalization.” *Id.* § III(G)(7).

¹¹ The Agreement’s reference to “housing vouchers” when defining Housing Slots suggests that the parties intended to measure compliance by counting only occupied Housing Slots. *See* S.A. § II(A). Housing vouchers represent an ongoing commitment to provide housing for eligible individuals, regardless of turnover. If a housing voucher recipient becomes ineligible for public housing, the public housing authority typically provides that voucher to another eligible individual. *See* U.S. Dep’t of Housing and Urban Dev., *Housing Choice Voucher Guidebook*, 24-2-3 (Apr. 2001), *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35634.pdf (recommending strategies to address low voucher utilization as a result of turnover and explaining that “[i]f ten families leave the program every month, the [public housing authority] will need to issue enough vouchers to ensure that ten families will execute new leases each month”). That principle, as applied to the Agreement, means that if an individual vacates his or her Housing Slot, that Housing Slot does not count toward section III(B)(3)’s benchmarks unless the State provides that Housing Slot to another individual.

These provisions, read together, show that the number of individuals to whom the State must provide Housing Slots pursuant to section III(B)(3) refers to the number of individuals simultaneously residing in community-based supported housing on given compliance dates. This language expresses the parties' intent for the State to modify its system and provide permanent housing with services that support individuals in integrated, community housing. In other words, the parties intended for individuals to simultaneously occupy 3,000 Housing Slots at the conclusion of the Agreement—not for a total of 3,000 individuals to have used a Housing Slot at some point, however short-lived, over the course of the eight-year Agreement. Measuring compliance as the number of occupied Housing Slots—i.e., the number of individuals the system supports on a given compliance date—reflects the parties' intent to create a system of permanent supported housing.

The State's interpretation—which includes vacant Housing Slots—ignores the concepts of permanence, maintenance, and stability incorporated throughout the Agreement. It disregards the Agreement's definition of Housing Slots as including tenancy supports that enable individuals to maintain permanent supported housing. Under the State's interpretation, even an individual who resided in a Housing Slot for less than a day would count toward compliance. *See* May 2016 Letter from N.C. Ex. J, at 1 (“Once that person is housed, the individual counts toward Section III B.3 . . .”). By counting vacant Housing Slots, the State's interpretation would allow the State to claim compliance even if no one occupies a Housing Slot at the conclusion of the Agreement.

The structure of section III(B)(3) further demonstrates that the parties intended for the State to develop the systemic capacity to simultaneously support 3,000 individuals in Housing Slots by 2020. Section III(B)(3) provides a schedule of annual benchmarks by which the State's

obligations increase by 458 or 459 Housing Slots each year from the second year of the Agreement until its conclusion, when the State must “provide Housing Slots to at least 3,000 individuals.” *See id.* This progressive schedule facilitates sustainable systemic growth, requiring the State to expand its capacity each year by building on the foundation of prior years.

Other sections of the Agreement also show that only occupied Housing Slots count toward compliance with section III(B)(3). For example, the State may temporarily suspend its efforts to inform individuals in adult care homes and psychiatric hospitals about supported housing if the “interest list for Housing Slots exceeds twice the number of Housing Slots required to be filled in the current and subsequent fiscal year.” S.A. § III(E)(2). The phrase “required to be filled” reflects that a Housing Slot is either occupied or vacant and supports the interpretation that only “filled,” i.e. occupied, Housing Slots count toward compliance.

Furthermore, measuring compliance by counting only occupied Housing Slots is the only interpretation that effectuates the Agreement’s stated purpose of achieving community integration. *See* S.A. § I(C) (“[T]hrough this Agreement, the Parties intend that the goals of community integration and self-determination will be achieved.”); *see also id.* § III(G)(7) (discussing “Agreement’s intended outcomes of increased integration, stable integrated housing, and decreased hospitalization and institutionalization”). When the parties’ purpose is ascertainable, as it is here, that purpose “is given great weight.” *See* Restatement § 202(1); *Silicon Image*, 271 F. Supp. 2d at 851 (interpreting agreement to effectuate its purpose).

2. *The State’s Prior Conduct Confirms that the Parties Intended to Count Only Occupied Housing Slots.*

The State’s conduct prior to this controversy confirms that the parties intended to measure compliance with section III(B)(3) by counting only the individuals occupying Housing Slots on given compliance dates. *See Mgmt Sys. Assocs., Inc.*, 762 F.2d at 1171–72 (holding

course-of-conduct evidence highly persuasive); *Crowder Constr. Co.*, 134 N.C. App. at 200–01, 517 S.E.2d at 186 (holding manner in which parties have carried out agreement indicative of how the parties construe the terms).

During the first two years of implementation, the State, consistent with the Agreement, regularly submitted reports to the United States and the Independent Reviewer that reported on compliance by counting only occupied Housing Slots. For example, the State described its July 2013 housing obligation as requiring “100 individuals living in supported housing.” Jessica Keith, N.C. Dep’t of Health & Human Servs., *Year One Summary* (Aug. 7, 2013) Ex. T, at 5. In January 2014, the State reported only the number of individuals “[c]onfirmed as in housing.” N.C. Dep’t of Health & Human Servs., *Transitions to Community Living Update as of January 6, 2014* Ex. U, at 1.

Furthermore, a chronological review of the State’s monthly reports reveals how the State’s interpretation evolved as it abandoned the parties’ intent in the face of significant noncompliance. Until August 2014, the State’s monthly reports were devoid of any references to vacant Housing Slots or individuals who had vacated their Housing Slots. Instead, the State reported on compliance by counting only occupied Housing Slots. *See* July 2014 Monthly Rep. Ex. B, at 2 (reporting net number of occupied Housing Slots in summary table as well as graphing net number of occupied Housing Slots and net gain in occupied Housing Slots); June 2014 Monthly Rep. Ex. C, at 1 (reporting that State met its obligation by having over 250 people “in housing”); May 2014 Monthly Rep. Ex. D, at 1 (same); April 2014 Monthly Rep. Ex. E, at 1 (same).

In other words, consistent with the parties’ intent, the State accounted for turnover when reporting on compliance. Each month, the State factored in turnover when reporting the number

of individuals in housing from each population category,¹² reporting only individuals who occupied Housing Slots.¹³

The State likewise factored in turnover when reporting its overall progress toward compliance with section III(B)(3). For instance, ten individuals moved into Housing Slots in May 2014. *Compare* April 2014 Monthly Rep. Ex. E, at 1 (reporting 57 Category Two individuals and 92 Category Five individuals occupied Housing Slots), *with* May 2014 Monthly Rep. Ex. D, at 1 (reporting 60 Category Two individuals and 99 Category Five individuals occupied Housing Slots). Yet, the State reported an increase of only nine individuals in Housing Slots, excluding from its count the Category 4 individual who had vacated his or her Housing Slot in May. *Compare* April 2014 Monthly Rep. Ex. E, at 1 (reporting compliance as 228 individuals), *with* May 2014 Monthly Rep. Ex. D, at 1 (reporting compliance as 237 individuals).

Similarly, ten individuals moved into Housing Slots in July 2014. *Compare* June 2014 Monthly Rep. Ex. C, at 2 (reporting 64 Category Two individuals and 110 Category Five individuals occupied Housing Slots), *with* July 2014 Monthly Rep. Ex. B, at 7 (reporting 67 Category Two individuals and 117 Category Five individuals occupied Housing Slots). Nevertheless, the State reported an increase of only six individuals in Housing Slots, excluding from its count the four individuals who had vacated their Housing Slots. *Compare* June 2014

¹² The Agreement prioritizes receipt of Housing Slots for five categories of individuals. S.A. § III(B)(2).

¹³ For example, the State reported that 17 Category Four individuals occupied Housing Slots as of April 30, 2014. April 2014 Monthly Rep. Ex. E, at 1. A month later, the State reported that only 16 Category Four individuals occupied Housing Slots. May 2014 Monthly Rep. Ex. D, at 1.

Similarly, the State reported that 47 Category One individuals and 16 Category Four individuals occupied Housing Slots as of June 30, 2014. June 2014 Monthly Rep. Ex. C, at 2. A month later, the State reported that only 44 Category One individuals and 15 Category Four individuals occupied Housing Slots. July 2014 Monthly Rep. Ex. B, at 7.

Monthly Rep. Ex. C, at 1 (reporting compliance as 254 individuals), *with* July 2014 Rep. Ex. B, at 2 (reporting compliance as 260 individuals).

In August 2014, the State began reporting a number labeled “total,” which appears to represent the combined number of occupied and vacant Housing Slots. *See* Aug. 2014 Monthly Rep. Ex. F, at 3. But the report otherwise suggests that the State continued to count only occupied Housing Slots towards compliance. *See id.* at 3, 6–7 (reporting net number of occupied Housing Slots in summary table as well as graphing net number of occupied Housing Slots and net gain in occupied Housing Slots).

Not until January 2015, two and a half years into implementation, did the State cease reporting its progress toward compliance as the number of occupied Housing Slots. *See* Jan. 2015 Monthly Rep. Ex. G, at 2. By that time, it was clear that the State would not meet its July 2015 obligation of 708 Housing Slots. *See id.* at 7 (reporting only 329 occupied Housing Slots as of January 31, 2015). This new interpretation abandoned the parties’ intent, but the State’s conduct from August 2012 to January 2015 confirms the Agreement’s meaning.

B. The State Has Failed to Meet Its July 2016 Housing Obligation Even Under Its Own Incorrect Interpretation of Compliance.

The State has failed to meet the Agreement’s requirement that it provide 1,166 Housing Slots by July 1, 2016. *See* S.A. § III(B)(3)(d). As of June 30, 2016, only 650 individuals occupied Housing Slots, representing a shortfall of 516 Housing Slots. *See* June 2016 Monthly Rep. Ex. Q, at 7. Even under the State’s new, incorrect interpretation, which would add 203 vacant Housing Slots, the State placed only 853 individuals into Housing Slots. *Id.* at 2, 7.

II. THE STATE MISCONSTRUES AND FAILS TO COMPLY WITH THE AGREEMENT’S EMPLOYMENT SERVICES REQUIREMENTS

The Agreement requires the State to provide Supported Employment Services to individuals in the target population. The State’s attempt to measure compliance by counting

anyone receiving Supported Employment Services, regardless of whether they are in the target population, contravenes the parties' intent. Under the proper interpretation, the State has failed to meet its July 2016 employment services obligation.

A. The Parties Intended to Measure Compliance with Section III(D)(3) by Counting Only Individuals in the Target Population Receiving Supported Employment Services on Given Compliance Dates.

1. The Agreement's Language Is Unambiguous.

The language of the Agreement makes clear that the parties intended to measure compliance with section III(D)(3) by counting only individuals in the target population receiving Supported Employment Services on given compliance dates. *See Johnson*, 716 F.3d at 820 (interpreting discrete provisions within context of entire agreement); *Crain*, 2015 WL 73961, at *2 (same); *Lynn*, 202 N.C. App. at 435, 689 S.E.2d at 207 (same); Restatement § 202(2) (“A writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together.”).

The three paragraphs of section III(D) work in concert to describe the State's employment services obligations. Section III(D)(1) requires the State to provide Supported Employment Services to “individuals with SMI, who are in or at risk of entry to an adult care home[.]”¹⁴ *Id.* Section III(D)(2) ensures the quality of those services by requiring that Supported Employment Services be provided with fidelity to an evidence-based supported employment model. *See id.* Section III(D)(3) dictates the timeline for when the State must provide such services to those individuals: “[B]y July 1, 2016, the State will provide Supported Employment Services to a total of 1,166 individuals[.]” *See id.* The reference to “individuals”

¹⁴ “An individual with ‘Serious Mental Illness’ (‘SMI’) is defined, consistent with North Carolina’s Local Management Entity (‘LME’) Operations Manual, as an individual who is 18 years of age or older with a mental illness or disorder (but not a primary diagnosis of Alzheimer’s disease or dementia) that is described in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, that impairs or impedes functioning in one or more major areas of living and is unlikely to improve without treatment, services and/or supports.” S.A. § II(C).

in section III(D)(3) must be construed in the context of section III(D)(1). Thus, the State's obligation to "provide Supported Employment Services to a total of 1,166 individuals [by July 1, 2016]," *id.* § III(D)(3), is tied directly to "individuals with SMI, who are in or at risk of entry to an adult care home," *id.* § III(D)(1).

Interpreting section III(D)(3) within the context of the entire Agreement makes clear that the parties intended to measure compliance by counting only individuals in the target population receiving Supported Employment Services. First, the Agreement's first substantive provision obligates the State to implement measures to benefit "individuals with SMI, who are in or at risk of entry to an adult care home, pursuant to the details and timelines set forth below." *See* S.A. § III(A). It identifies the Agreement's target population and links the "details and timelines set forth below," which includes section III(D)(3)'s timeline, to that target population. It defies logic to construe section III(D)(3) to include individuals outside the Agreement's target population.

Second, measuring compliance by counting only individuals in the target population is consistent with the use of the term "individual" throughout the Agreement. The introductory paragraphs of substantive provisions identify the target population for the subsequent paragraphs.¹⁵ Thereafter, the Agreement uses the term "individuals" in the remainder of the provision as shorthand for the identified target population. For instance, the Supported Housing Slots provision identifies its target population in section III(B)(2). The word "individuals" used thereafter in the Supported Housing Slots provision, such as in section III(B)(3), refers back to the target population in section III(B)(2). *See, e.g.,* S.A. § III(B)(3)(d) ("By July 1, 2016, the

¹⁵ As noted, the Agreement's overall target population is "individuals with SMI, who are in or at risk of entry to an adult care home[.]" *See* S.A. § III(A). Although some provisions concern subsets of the target population, no provision in the Agreement concerns individuals outside the overall target population.

State will provide Housing Slots to at least 1,166 individuals.”); *id.* § III(B)(7) (“Housing Slots will be provided for individuals to live in settings that meet the following criteria . . .”).

Finally, measuring compliance in reference to individuals in the target population is consistent with the Agreement’s stated purpose to serve “individuals with SMI, who are in or at risk of entry to an adult care home.” *See* S.A. § III(A); *Silicon Image*, 271 F. Supp. 2d at 851 (interpreting agreement to effectuate its purpose). In contrast, measuring compliance by counting any individual receiving employment services ignores the Agreement’s purpose. The State’s interpretation would allow it to claim compliance with section III(D)(3) even if it does not provide Supported Employment Services to a single individual with serious mental illness or a single individual in or at risk of entry to an adult care home.

2. *The State’s Prior Conduct Confirms that the Parties Intended to Count Only Individuals in the Target Population.*

The State’s conduct prior to this dispute confirms that the parties intended to count only individuals in the target population receiving Supported Employment Services on given compliance dates. *See Mgmt Sys. Assocs., Inc.*, 762 F.2d at 1171–72 (finding course-of-conduct evidence highly persuasive); *Crowder Constr. Co.*, 134 N.C. App. at 200–01, 517 S.E.2d at 186 (finding manner in which parties have carried out agreement indicative of how the parties construe the terms).

During the first three years of implementation, the State repeatedly described its employment services obligations in reference to individuals with serious mental illness who are in or at risk of entry to adult care homes. For instance, the State’s strategic plan to meet its July 2015 employment services obligation involved providing Supported Employment Services to “708 individuals with SMI and [serious persistent mental illness] who are in or at risk of entry

into an adult care home on or before June 30, 2015.” *See* N.C. Dep’t of Health & Human Servs., *Supported Employment Strategic Plan* (Sept. 2014) Ex. V, at 1.

The State also reported compliance as the number of individuals in the target population receiving Supported Employment Services on the reporting dates. Although the State acknowledged that it provides employment services to individuals outside the target population, it did not count those individuals toward compliance. *See, e.g.*, Dec. 2014 Monthly Rep. (Jan. 27, 2015) Ex. W, at 2 (reporting compliance as serving 62 individuals “in or at risk of [adult care home] placement”). For example, in May 2015, the State reported that of the 460 individuals receiving Supported Employment Services, it was “providing those services to 62 individuals that meet the requirements of the settlement.” 2014 Annual Rep. (May 15, 2015) Ex. X, at 2. It described those 62 individuals as in or at risk of entry to an adult care home. *See id.* at 4.

Furthermore, the State did not report on compliance in its June 2015 and July 2015 reports because the State was “assess[ing] if all individuals reported [met] the in or at risk definition for supported employment.” July 2015 Monthly Rep. (Aug. 25, 2015) Ex. Y, at 2; June 2015 Monthly Rep. Ex. K, at 2. Similarly, the State conducted reviews to ensure that those receiving services met “the definition of ‘in or at risk of entry to an adult care home’ *as laid out in the settlement.*” *E.g.*, Oct. 2014 Monthly Rep. (Nov. 25, 2014) Ex. Z, at 2 (emphasis added).

For three years, the State reiterated its understanding that only individuals in the target population count toward compliance with section III(D)(3). It recognized that individuals outside the target population receive employment services, but it did not count them toward compliance. It cannot do so now to avoid its obligations under the Agreement.

B. The State Has Failed to Meet Its July 2016 Employment Services Obligation.

The State has failed to meet the Agreement's requirement that it provide Supported Employment Services to 1,166 individuals in the target population by July 1, 2016. *See* S.A. § III(D)(3). As of June 30, 2016, only 708 individuals in the target population received Supported Employment Services, representing a shortfall of 458 individuals. *See* June 2016 Monthly Rep. Ex. Q, at 2. The State contends that an additional 1,047 individuals outside the target population count toward satisfying this obligation. However, section III(D)(3) requires the State to serve individuals in the target population, and only those individuals count toward compliance.

III. REMEDIES

The United States respectfully requests that the Court find the State noncompliant with its July 1, 2016 obligations under sections III(B)(3) and III(D)(3) of the Agreement and order specific performance pursuant to a schedule of monthly obligations to bring the State into compliance by a set date, as reflected in the attached proposed order. *See U.S. ex rel. McDermitt, Inc.*, 34 F. Supp. 2d at 399 (“A motion to enforce a settlement agreement is an action for specific enforcement of a contract.”); *Clayton*, 2004 WL 734978, at *3; *Williams v. Habul*, 219 N.C. App. 281, 290, 724 S.E.2d 104, 110 (2012) (“The sole function [of specific performance] is to compel a party to do precisely what he ought to have done without being coerced by the court.”).

The Court may order monthly obligations to bring the State into compliance with the Agreement. *See* Restatement § 357 cmt. a (“An order of specific performance is intended to produce as nearly as is practicable the same effect that the performance due under a contract would have produced.”); Restatement § 358(1) (“An order of specific performance . . . will be so drawn as best to effectuate the purposes for which the contract was made and on such terms as

justice requires. It need not be absolute in form and the performance that it requires need not be identical with that due under the contract.”); *Castle v. Cohen*, 840 F.2d 173, 180 (3d Cir. 1998) (holding that a district court may “modify its decree to incorporate any additional time necessary . . . to protect its own decree by providing a reasonable time for” performance); *Golf Resorts, Inc. v. Peshak*, 991 F.2d 799 (Table), 1993 WL 113722, at *7 (7th Cir. Apr. 13, 1993) (unpublished) (noting that “[t]he specific performance order must necessarily include time, reasonable under the circumstances, for the [party] to perform”).

A schedule of monthly obligations is warranted because, based on past performance, it is highly unlikely that the State could comply with its July 2016 housing and employment services obligations immediately or even within thirty days. Instead, requiring the State to meet its July 2016 obligations under a schedule of monthly obligations will increase the likelihood that the State will comply with its July 2016 obligations in a timely manner and be fully compliant at the Agreement’s conclusion, scheduled for 2020.

The United States also respectfully requests that the Court set quarterly status conferences at which the State must report on its progress toward compliance.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court grant the Motion to Enforce the Settlement Agreement.

Dated: January 9, 2017

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NORTH CAROLINA,

Defendant.

Case No. 5:12-cv-557-F

[PROPOSED] ORDER

Having reviewed the United States' Motion to Enforce the Settlement Agreement (D.E. __) and Defendant's Responses thereto (D.E. __), the Court hereby GRANTS the Motion and

1. Declares that (i) compliance with section III(B)(3) of the Agreement is measured by counting the number of occupied Housing Slots on the relevant compliance dates and (ii) compliance with section III(D)(3) of the Agreement is measured by counting the number of individuals with serious mental illness in or at risk of entry to an adult care home who are receiving Supported Employment Services on the relevant compliance dates;
2. Declares that the State of North Carolina has failed to meet its July 1, 2016 obligations under sections III(B)(3) and III(D)(3) of the Agreement;
3. Orders the State to serve individuals in Housing Slots and Supported Employment Services pursuant to the following schedules of monthly obligations:

SUPPORTED HOUSING							
2017 Compliance Date	Number of Occupied Housing Slots	2018 Compliance Date	Number of Occupied Housing Slots	2019 Compliance Date	Number of Occupied Housing Slots	2020 Compliance Date	Number of Occupied Housing Slots
Mar. 1	990	Jan. 1	1,492	Jan. 1	2,092	Jan. 1	2,699
April 1	1,041	Feb. 1	1,543	Feb. 1	2,144	Feb. 1	2,751
May 1	1,090	Mar. 1	1,590	Mar. 1	2,191	Mar. 1	2,798
June 1	1,141	April 1	1,641	April 1	2,243	April 1	2,850
July 1	1,190	May 1	1,690	May 1	2,292	May 1	2,899
Aug. 1	1,241	June 1	1,741	June 1	2,344	June 1	2,951
Sept. 1	1,292	July 1	1,790	July 1	2,393	July 1	3,000
Oct. 1	1,341	Aug. 1	1,841	Aug. 1	2,445		
Nov. 1	1,391	Sept. 1	1,892	Sept. 1	2,497		
Dec. 1	1,441	Oct. 1	1,941	Oct. 1	2,546		
		Nov. 1	1,992	Nov. 1	2,598		
		Dec. 1	2,041	Dec. 1	2,647		

SUPPORTED EMPLOYMENT					
2017 Compliance Date	Number of Individuals in Target Population Receiving SES	2018 Compliance Date	Number of Individuals in Target Population Receiving SES	2019 Compliance Date	Number of Individuals in Target Population Receiving SES
Mar. 1	1,002	Jan. 1	1,538	Jan. 1	2,180
April 1	1,056	Feb. 1	1,592	Feb. 1	2,234
May 1	1,109	Mar. 1	1,644	Mar. 1	2,286
June 1	1,163	April 1	1,698	April 1	2,340
July 1	1,216	May 1	1,751	May 1	2,393
Aug. 1	1,270	June 1	1,805	June 1	2,447
Sept. 1	1,324	July 1	1,858	July 1	2,500
Oct. 1	1,377	Aug. 1	1,912		
Nov. 1	1,431	Sept. 1	1,966		
Dec. 1	1,484	Oct. 1	2,019		
		Nov. 1	2,073		
		Dec. 1	2,126		

and;

4. Sets quarterly status conferences at which the State must report on its progress toward compliance, beginning with an initial status conference on _____, 2017.

SO ORDERED,

This ____ day of _____ 2017.

JAMES C. FOX
UNITED STATES DISTRICT JUDGE