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similarly situated

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15
16 UNITED STATES DISTRICT COURT
17 DISTRICT OF ARIZONA

18 Victor Parsons; Shawn Jensen; Stephen Swartz;
Dustin Brislan; Sonia Rodriguez; Christina
19 Verduzco; Jackie Thomas; Jeremy Smith; Robert
Gamez; Maryanne Chisholm; Desiree Licci; Joseph
20 Hefner; Joshua Polson; and Charlotte Wells, on
behalf of themselves and all others similarly
21 situated; and Arizona Center for Disability Law,
Plaintiffs,

22 v.

23 David Shinn, Director, Arizona Department of
Corrections; and Richard Pratt, Division Director,
24 Division of Health Services Contract Monitoring
Bureau, Arizona Department of Corrections, in their
25 official capacities,

26 Defendants.

No. CV 12-00601-PHX-ROS

**PLAINTIFFS' STATEMENT
OF DISCOVERY DISPUTE**

**CERTIFICATION OF
ATTEMPT TO MEET AND
CONFER PURSUANT TO
LOCAL RULE 7.2(j)**

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1 Defendants do not believe that this is a discovery dispute, and refuse to provide
2 their portion of a joint statement pursuant to Local Rule 7.2(j) and the Court's Discovery
3 Dispute Instructions.¹

4 On March 23, 2020, Defendants issued a press release stating that six prisoners had
5 been tested for COVID-19.² On March 24, Plaintiffs' counsel wrote Defendants' counsel,
6 requesting the class members' names and ADC numbers, and asking to be notified if and
7 when additional class members are tested in the future, so that Plaintiffs' counsel could
8 monitor the delivery of health care to these persons.³ See Kendrick Decl. ¶ 2, Ex. 1 at 5.
9 Counsel met-and-conferred on March 26, and Defendants refuse to provide the requested
10 information on the basis that the Stipulation does not cover COVID-19 or require
11 Defendants to provide this information to Plaintiffs. [*Id.* ¶ 4, see also Ex. 1 at 4]

12 The Stipulation governs the provision of medical care for all class members,
13 including elements of care relevant to this request, such as timely access to on-site care
14 (PMs 36-41), specialty care (PM 48-52), diagnostic services (PM 45-47), and disease
15 management guidelines for chronic diseases (PM 55). [Doc. 1185-1 at 10-11]⁴ Plaintiffs'
16 counsel routinely reviews medical records to ensure class members receive care that
17 complies with these requirements, and to identify patterns and systemic issues in the
18 course of their monitoring activities, as authorized by Paragraph 29 of the Stipulation and
19 pursuant to their appointment as class counsel and their ethical obligations of
20

21 ¹ See Declaration of Corene Kendrick ("Kendrick Decl."), ¶ 7, Exh. 1 at 1
22 (Defendants' counsel Rachel Love stating, "We do not agree that this is a discovery issue
and therefore will not be providing a joint statement.")

23 ² [https://corrections.az.gov/sites/default/files/notifications/media-advisory-adcrr-
covid-19-update-3-23-20.pdf](https://corrections.az.gov/sites/default/files/notifications/media-advisory-adcrr-covid-19-update-3-23-20.pdf). Defendants issued another press release on March 25, 2020,
24 stating that one additional class member had been tested, but no results had been received.
See [https://corrections.az.gov/sites/default/files/notifications/adcrr-update-covid-19-
032520.pdf](https://corrections.az.gov/sites/default/files/notifications/adcrr-update-covid-19-032520.pdf).

25 ³ Plaintiffs' counsel have remote read-only access to class members' medical
26 records, pursuant to the Stipulation and Court order, after the transition from paper
records to an electronic system. Kendrick Decl. ¶ 3, Doc. 1185, ¶ 29; Doc. 1667 at 1.

27 ⁴ In 2013, the Court certified a class as to multiple practices with regard to health
28 care provided to people in Defendants' custody, including the "[f]ailure to provide care
for chronic diseases and *protection from infectious disease*." Doc. 372 at 22 (emphasis
added); *aff'd*, *Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014).

1 representation. [Kendrick Decl. ¶ 3; *see also* Doc. 372 at 23]⁵

2 It would be far more burdensome for Plaintiffs’ counsel to review the medical
3 records of all 34,000 class members to find the class members with suspected COVID-19,
4 than for Defendants to periodically provide a list of names and ADC numbers of people
5 whose medical conditions are so serious that they have received one of the few scarce
6 COVID-19 tests still available in the State of Arizona.⁶

7 Plaintiffs respectfully request that the Court order Defendants to provide Plaintiffs’
8 counsel with the names and ADC numbers of all class members who have been tested for
9 COVID-19, or who are tested in the future, pursuant to Paragraph 29 of the Stipulation.

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11 Respectfully submitted,

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13 Dated: March 27, 2020

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25 ⁵ Paragraph 29 states that Plaintiffs shall have “reasonable access to . . . documents
26 necessary to properly evaluate whether Defendants are complying with the performance
measures and other provisions of this Stipulation.” Doc. 1185, ¶ 29.

27 ⁶ *See* Ronald J. Hansen, *Rep. Greg Stanton: Test kit shortage could end*
28 *coronavirus screening*, ARIZ. REPUBLIC (March 26, 2020) available at
<https://www.azcentral.com/story/news/local/arizona-health/2020/03/26/coronavirus-test-kit-shortage-covid-19-screening-rep-greg-stanton/2923097001/>

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2020, I electronically transmitted the above document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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