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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12 Victor Parsons, *et al.*, on behalf of themselves
and all others similarly situated; and Arizona
Center for Disability Law,

13 Plaintiffs,

14 v.

15 David Shinn, Director, Arizona Department of
Corrections; and Richard Pratt, Interim
16 Division Director, Division of Health Services,
Arizona Department of Corrections, in their
17 official capacities,

18 Defendants.

NO. 2:12-cv-00601-ROS

**DEFENDANTS’ RESPONSE TO
PLAINTIFFS’ STATEMENT OF
DISCOVERY DISPUTE (DKT. 3552)**

19 On March 23, 2020, the Court denied Plaintiffs’ Emergency Motion regarding
20 COVID-19, finding the Stipulation “does not provide the ability to grant Plaintiffs the relief
21 they seek.” (Dkt. 3540.) The next day, Plaintiffs demanded that Defendants provide them
22 with every class member’s name and ADCRR number who was tested for COVID-19 and
23 that, going forward, Defendants notify Plaintiffs’ counsel each time an inmate is tested.
24 (Dkt. 3553-01 at 6.)¹ As they failed to do in their Emergency Motion, Plaintiffs provided
25 no authority from the Stipulation which requires Defendants to compile this information.

26
27 ¹ The Court has previously found similar demands to be outside the scope of the
28 Stipulation and thus outside of this Court’s jurisdiction to mandate relief. (Dkt. 3540; *see also e.g.*, 1607, 1702, 3175.)

1 Defendants requested authority in written correspondence and during a telephone
2 conference regarding the issue, but Plaintiffs could not provide any.

3 Despite this, Plaintiffs insisted on bringing the issue to the Court's attention through
4 its discovery dispute process. Defendants informed Plaintiffs that because their demand
5 was outside the scope of monitoring activities permitted in this litigation, submission of this
6 issue to the Court by way of a discovery dispute position statement was inappropriate. *See*
7 Exhibit 1 (March 27, 2020 Correspondence from Love to Kendrick). Plaintiffs filed their
8 statement anyway, and neglected to attach Defendants' detailed correspondence explaining
9 why Plaintiffs were not entitled to the information they sought and why it was not a
10 discovery dispute. (Ex. 1.)

11 For these reasons, and those specific reasons detailed in Exhibit 1, the Court should
12 deny Plaintiffs the relief they seek in their Statement of Discovery Dispute.² (Dkt. 3552.)

13 DATED this 30th day of March, 2020.

14 STRUCK LOVE BOJANOWSKI & ACEDO, PLC

15
16 By /s/Daniel P. Struck

17 Daniel P. Struck
18 Rachel Love
19 Timothy J. Bojanowski
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23 *Attorneys for Defendants*
24
25
26

27 _____
28 ² As of this filing, no inmates in ADCRR's ten state-operated prison complexes have
tested positive for COVID-19.

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2020, I electronically transmitted the attached 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:

- Alison Hardy: ahardy@prisonlaw.com
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I hereby certify that on this same date, I served the attached document by U.S. Mail, postage prepaid, on the following, who is not a registered participant of the CM/ECF System:

N/A

/s/Daniel P. Struck

EXHIBIT 1

EXHIBIT 1



STRUCK LOVE BOJANOWSKI & ACEDO, PLC

Rachel Love
480.420.1616
rlove@strucklove.com

March 27, 2020

VIA EMAIL ONLY

Corene Kendrick
PRISON LAW OFFICE
General Delivery
San Quentin, CA 94964

**Re: *Parsons v. Shinn*
Class Members tested for COVID-19**

Dear Corene:

Defendants respond to Plaintiffs' demand for names and ADCRR numbers of all inmates who have been, or in the future will be, tested for COVID-19.¹ As Tim Bojanowski explained yesterday during a call on the issue, Defendants do not agree to your demand as it exceeds the scope of the Stipulation and HCPMs. Not only does this request exceed the scope of the Stipulation and Defendants' obligations thereunder, but the Court has already effectively denied your inquiries pertaining to COVID-19. (Docs. 3520 & 3540.)

As a threshold matter, Defendants do not believe that this is an appropriate "discovery issue" within the scope of the Stipulation. As discussed below, your demand is outside the scope of monitoring activities permitted in this litigation. Accordingly, Defendants do not believe that a joint discovery dispute position statement is appropriate.

Nonetheless, you have failed to establish that you are entitled to COVID-19 testing information. Indeed, on Monday, March 23, 2020, the Court summarily rejected your demand that Defendants develop and implement a response plan to COVID-19 which included a demand that ADCRR screen and test class members for COVID-19. (Doc. 3540 at 1.) Plaintiffs' new demand that Defendants now perpetually report on COVID-19 testing not only generally mirrors your already rejected request, but goes further and inappropriately requires Defendants to track and report on care provided to individual class members on issues not covered by the Stipulation nor specifically measured by the HCPMs.

¹ To the extent Plaintiffs demand COVID-19 testing information for inmates assigned to facilities operated by private correctional providers, the request certainly exceeds the scope of the certified class.

Corene Kendrick

March 27, 2020

Page 2

Defendants likewise disagree with Plaintiffs' position that HCPMs 39-41 (timely access to providers), HCPMs 48-52 (specialty care), HCPMs 45-47 (diagnostic services disease management), and HCPM 55 (disease management) provide grounds to demand that ADCRR provide names and ADCRR numbers of all inmates on an ongoing basis who have been, or in the future will be, tested for COVID-19. The HCPMs cited to do not pertain to COVID-19 testing and reporting. Infectious disease control management as dictated by the Stipulation (Para. 12 (a) & (b)) and HCPMs 59 & 62 is limited to offering annual influenza vaccinations to the inmate population; offering inmates with chronic diseases immunizations as established by the CDC; and screening inmates for tuberculosis. It is undisputed that there currently is no vaccination for COVID-19. Neither the Stipulation nor the HCPMs provide a basis for demanding that Defendants perpetually track and report on COVID-19 testing, results, and care and provide those reports to you. Thus, Plaintiffs impermissibly seek to engage in post-settlement discovery on an issue not covered by the Stipulation.

In addition, neither the Stipulation nor the HCPMs require Defendants to track and account for specified individual inmate care on a perpetual basis. Indeed the Court has found on several occasions that its jurisdiction is limited to the terms of the Stipulation and thus it cannot order specific relief as it relates to challenges to individual class members' receipt of medical care. (Docs. 1607, 1702, 1607, 3175.) Thus, Plaintiffs impermissibly seek to engage in post-settlement discovery regarding individual instances of care provided on subject matter not covered by the Stipulation. Furthermore, Plaintiffs' demand to provide continuous tracking and reporting on COVID-19 testing imposes an undue burden on medical operations to create and compile such reports versus utilizing resources to provide patient care to all manner of medical conditions presented by the inmate population.

Finally, we can inform you that to date no inmates assigned to ADCRR-operated complexes have tested positive for COVID-19. Seven inmates have been tested. Five tests were negative. Two tests are pending results. Irrespective of the parties' disagreement regarding Plaintiffs' demand, ADCRR and Centurion intend to adhere to the CDC's Guidance on COVID-19.

Sincerely,



Rachel Love

RL/eap

cc: Counsel of Record