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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

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

Plaintiffs,

v.

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

Defendants.

No. CV 12-00601-PHX-ROS

**PLAINTIFFS' REPLY IN
SUPPORT OF MOTION TO
ENFORCE THE
STIPULATION AND FOR
CONTEMPT OF THE MAY
2019 OSC REGARDING
PERFORMANCE MEASURE
50 AT ASPC-FLORENCE**

(URGENT SPECIALTY CARE)

[DOC. 3584]

Defendants argue that they should not be sanctioned under this Court's May 2019 Order to Show Cause ("OSC") for their ongoing noncompliance with Performance Measure ("PM") 50 at ASPC-Florence because the OSC "ordered compliance for June 2019 only." Doc. 3608 at 1, 3.¹ They conspicuously do not point to any language in the OSC that says that, because the plain language of the OSC in fact says the opposite, ordering Defendants to: "bring the following performance measures into substantial compliance ***no later than July 1, 2019.***" Doc. 3235 at 6 (emphasis added). It strains credulity for Defendants to argue that the Court intended them to comply with the PMs in the OSC *only for June 2019*, after which time they were free to continue or return to their chronic noncompliance.

Defendants also assert that "recent compliance with PM 50 has been challenging, largely because that measure no longer reflects an achievable goal under current circumstances," and that "[t]here are simply not enough available medical specialists." Doc. 3608 at 2. As noted in Plaintiffs' Motion, this is not a new excuse, as Defendants have offered variations on it for almost three years with two different contractors. [Doc. 3584 at 5-11] And to the extent "current circumstances" is a referral to COVID-19, Defendants told the Court on May 21, regarding their March 2020 noncompliance with PM 50 at ASPC-Florence that they have added telemedicine specialties of orthopedics, nephrology, cardiology, and urology; and that outside specialty services "including but not limited to dermatology, imaging, ophthalmology, endocrinology, and cardiology have extended office hours and opened weekends." Doc. 3604-1 at 291; *see also id.* at 281 (March 2020 CGAR result of 40% compliance with PM 50 at ASPC-Florence).²

The OSC is clear, specific, and definite, and the Court has the power to impose

¹ Performance Measure ("PM") 50 requires that "[u]rgent specialty consultations and urgent specialty diagnostic services will be scheduled and completed within 30 calendar days of the consultation being requested by the provider." Doc. 1185-1 at 26.

² Governor Ducey temporarily suspended "non-essential" medical procedures on March 19 as part of his declaration of a State of Emergency related to COVID-19. On April 22, 2020, he issued an executive order removing these restrictions. *See* <https://azgovernor.gov/governor/news/2020/04/governor-ducey-issues-new-guidance-elective-surgeries>

civil contempt sanctions for Defendants' continuing and ongoing defiance of it with regard to PM 50 at ASPC-Florence. *Parsons v. Ryan*, 949 F.3d 443, 455-57 (9th Cir. 2020) (upholding this Court's authority to issue a similar compensatory and coercive contempt sanction for noncompliance with the Stipulation).

Respectfully submitted,

Dated: June 3, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 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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