

1 UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF ARIZONA
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4 _____
 5 Victor Parsons, et al., on)
 6 behalf of themselves and all)
 7 others similarly situated;)
 8 and Arizona Center for)
 9 Disability Law,)
 10 Plaintiffs,) No. CV 12-00601-PHX-DKD
 11 vs.) Phoenix, Arizona
 12 Charles Ryan, Director,) April 10, 2018
 13 Arizona Department of) 1:03 p.m.
 14 Corrections; and Richard)
 15 Pratt, Interim Division)
 16 Director, Division of Health)
 17 Services, Arizona Department)
 18 of Corrections, in their)
 19 Official capacities,)
 20 Defendants.)
 21 _____

22 BEFORE: THE HONORABLE DAVID K. DUNCAN, MAGISTRATE JUDGE

23 REPORTER'S TRANSCRIPT OF PROCEEDINGS

24 (Evidentiary Hearing/Order to Show Cause)
 25 Day 6
 (Pages 1120 through 1247, inclusive.)

26 Official Court Reporter:
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1 P R O C E E D I N G S

2 THE MAGISTRATE JUDGE COURTROOM CLERK: Civil Case
3 Number 12-601, Parsons, et al., versus Ryan, et al., on for
4 continuation of Order to Show Cause hearing.

5 THE COURT: Good afternoon. Would counsel please
6 announce. 01:03PM

7 MS. KENDRICK: Good afternoon, Your Honor. Corene
8 Kendrick from the Prison Law Office for the plaintiff class.

9 THE COURT: Good afternoon.

10 MS. EIDENBACH: Good afternoon, Your Honor. Kirsten
11 Eidenbach for the prisoner plaintiff class. 01:03PM

12 THE COURT: Thank you. Good afternoon.

13 MS. ABELA: Good afternoon. Maya Abela for the
14 Arizona Center for Disability Law.

15 THE COURT: Thank you. Good afternoon. 01:03PM

16 MS. LOVE: Good afternoon, Your Honor. Rachel Love,
17 Dan Struck, Timothy Bojanowski, and Richard Valenti for
18 defendants.

19 THE COURT: Thank you. Good afternoon all.

20 Are we ready to continue with the redirect of Mr.
21 Pratt? 01:03PM

22 MS. LOVE: Yes, we are, Your Honor.

23 THE COURT: Mr. Pratt, if you would kindly return to
24 the witness stand.

25 MS. LOVE: Actually, I'm sorry. It's Division 01:03PM

1 Director McWilliams is who we were going to continue with.

2 THE COURT: All right. That's fine.

3 Sorry, Mr. Pratt.

4 Mr. McWilliams, if you would kindly return to the
5 witness stand. Appreciate the fact that you have been willing
6 to be bumped from time to time while we deal with the emergent
7 and exigent schedules, I guess, and so thank you, sir.

01:04PM

8 THE WITNESS: No problem. You're welcome.

9 CARSON MCWILLIAMS,
10 a witness herein, having been previously duly sworn by the
11 clerk to speak the truth and nothing but the truth, was
12 examined and testified further as follows:

13 DIRECT EXAMINATION (Resumed)

14 BY MS. LOVE:

15 Q. Division Director McWilliams, when we left off with your
16 testimony the last time, we were discussing the DI that governs
17 procedures for medication transports. Do you recall that
18 testimony?

01:04PM

19 A. Yes, I do.

20 Q. And if you need to refer to it, already in evidence is DI
21 361 that's Exhibit Number 2 in front of you just if you need to
22 refer to it. But just for a short recap, we talked about the
23 transition from the August 30th or the August 2017 memorandum
24 and then which found its way to DI 361 that there were some
25 additions such as procedure for unscheduled and after hours

01:04PM

01:05PM

1 transports which we talked about, correct?

2 A. Correct.

3 Q. Also, in addition to the DI was a distribution list. Is
4 that correct?

5 A. Yes, it is.

01:05PM

6 Q. And that distribution list is something that's on the
7 shared drive that you spoke about before?

8 A. Yes, it is.

9 Q. We also talked about the transportation coordinator
10 position that was also created as a result, correct?

01:05PM

11 A. Correct.

12 Q. I want to talk to you a little bit more about the duties of
13 the transportation coordinator position with respect to the DI.
14 And we talked last time in general that the transportation
15 coordinator's position, the job is to track the transport
16 statewide on a daily basis, correct?

01:05PM

17 A. Yes, it is.

18 Q. And that is for intra-facility transports to state-run
19 complexes?

20 A. Correct.

01:05PM

21 Q. How does this one person track the medication transfers for
22 transports that may be happening on a daily basis
23 simultaneously through all 10 state-run complexes?

24 A. Well, the main part of their job or focus is two main
25 things. One of them is they have the entire list of all

01:06PM

1 transports that are happening that day, and they have that in
2 advance. They get that list two days, one day at the
3 worst-case scenario in advance. And then they adjust
4 transportation groups as necessary. Let's say on any
5 particular day a large amount of inmates were being moved from
6 Lewis complex. Well, they might adjust some officers,
7 transport officers over from Perryville because they didn't
8 have very many things happening transportation-wise over to
9 Lewis, just for the day, and they would take the staff and the
10 vehicles so they could help assist in the transports of that
11 particular place.

01:06PM

01:06PM

12 They also run the bus transport system so that they
13 could adjust along with someone, a coordinator in central
14 office. It's a combination there. And they -- to ensure that
15 they schedule all what we call statewide transports on our
16 transportation buses on a daily basis.

01:07PM

17 Q. The transportation coordinator is monitoring whether or not
18 medications are making it with the inmate from the sending
19 facility to the receiving facility, correct?

20 A. Yes, but they are looking more, because there's such a high
21 volume, they're looking more at some type of discrepancy. So
22 if there's an issue with one of them then they are contacted,
23 because IR has to be generated. That IR is electronically sent
24 to the transportation coordinator who then follows up
25 electronically with duty officers, transportation sergeants at

01:07PM

01:07PM

1 the receiving facility to ensure that that issue is addressed
2 upon arrival.

3 Q. When you say "IR," is that an information report?

4 A. Yes, it is.

5 Q. And an information report then documents a discrepancy in
6 sending or receiving medications?

01:08PM

7 A. Yes, it does.

8 Q. Who advises the transportation coordinator of any
9 discrepancies?

10 A. It would be the person that generates the information
11 report, and that's going to be done at the departing
12 institution and that IR would be generated either at the intake
13 receiving gate area either by the transportation sergeant or it
14 could actually be generated also by a Corizon employee.

01:08PM

15 Q. And the discrepancies, those are tracked on the tracking
16 form, correct?

01:08PM

17 A. Yes, they are.

18 Q. Does any leadership personnel at the facility complex level
19 receive the discrepancy reports in addition to the
20 transportation coordinators looking at all 10 complexes?

01:08PM

21 A. Yes. The administrators at that particular facility would
22 also be aware of that. That would entail the warden also would
23 know as well as the duty officer. The unit where the inmate
24 was either coming from or going to would also be aware of it.

25 So that goes out to several different staff members. The major

01:09PM

1 of the complex gets a copy of it. So there's a lot of people
2 aware of the issue.

3 Q. What is a duty officer?

4 A. A duty officer is an administrator that's assigned to work
5 on a seven-day basis to cover outside-hour issues. So they
6 would be -- they would work physically at the complex between
7 the hours of around 3:00 in the afternoon to around 1:00 in the
8 morning of the next day so that they could address any type of
9 issues that happen after normal business hours.

01:09PM

10 Q. So does the assignment of a duty officer capture or provide
11 for leadership level personnel to be onsite post 5 p.m., for
12 example?

01:09PM

13 A. Yes, they do.

14 Q. Are there any meetings that are conducted on a daily basis
15 at the complex level to discuss whether or not a medication
16 transport discrepancy had occurred that day?

01:10PM

17 A. Yes. On a daily basis there's a meeting that occurs, and
18 the warden facilitates that. And involved in that are the
19 health administrator, facility health administrator is involved
20 in it as well as the warden, the monitor from the department
21 side is involved in that meeting. The transportation sergeant
22 might be involved in that meeting. Other key personnel, like
23 the deputy warden of operations, might be involved in it. But
24 there's several people that are involved in that meeting, and
25 it happens every afternoon during regular business days.

01:10PM

01:10PM

1 THE COURT: Can I interject for just -- when did this
2 daily meeting start?

3 THE WITNESS: We used to -- the daily meetings started
4 around -- I'm not sure of the exact date, but I would think it
5 started around early in December, maybe late November.

01:11PM

6 THE COURT: And it's a daily meeting that occurs at a
7 single place. It's not a daily meeting at each facility?

8 THE WITNESS: No. It's a daily meeting at each
9 facility.

10 THE COURT: At each complex, and it started sometime
11 in December?

01:11PM

12 THE WITNESS: Or maybe late February -- or November, I
13 mean.

14 THE COURT: Okay. Thank you.

15 BY MS. LOVE:

01:11PM

16 Q. What is the purpose of the meeting?

17 A. The meeting is to discuss issues. It doesn't have to be
18 something with medication being transferred. It could be other
19 medical issues. But it is to discuss issues that anyone is
20 having with anything getting accomplished to ensure that we can
21 provide the best, you know, possible care that we can.

01:11PM

22 Q. Are missed medical appointments discussed?

23 A. Yes, they would be.

24 Q. Are any potential missed outside consultation transports
25 discussed?

01:12PM

1 A. Yes, they would be.

2 Q. Are any staffing issues that may arise from the medical
3 side or the security side discussed?

4 A. Yes, they are.

5 Q. If you would take a look for me at Exhibit Number 77, which
6 should be there in your stack towards the end.

01:12PM

7 A. Yes.

8 Q. Do you recognize what this document is?

9 A. Yes. It's a tracking form for the medication transfers.

10 Q. We're going to hold for a second so the judge can get his
11 form.

01:12PM

12 THE COURT: Sorry. We had a bench trial last week and
13 there's been an interloper file that remains. All right.
14 Thank you very much. I'm sorry.

15 I still don't have the right binder. Give me a
16 second, please. I'm sorry.

01:13PM

17 Thank you. Please continue.

18 MS. LOVE: Thank you, Your Honor.

19 BY MS. LOVE:

20 Q. Okay. So Exhibit Number 77 is a medication transport
21 report?

01:13PM

22 A. Yes, it is.

23 Q. And do you know for what time period?

24 A. It looks like it's for a single day, which would be 2-12 of
25 18.

01:13PM

1 Q. And from this document, are you able to tell which complex
2 this refers to?

3 A. Yes. It's the Lewis complex.

4 Q. And how are you able to tell that it's the Lewis complex?

5 A. The receiving unit locations are all Lewis. All the IR
6 numbers are Lewis complex. 01:13PM

7 Q. And how can you tell that the receiving unit codes are
8 Lewis?

9 A. They have codes based on each unit, and the Ls are the
10 Lewis ones. 01:14PM

11 Q. And is this the form that is currently used by the Lewis
12 complex to track any medication transport discrepancies?

13 A. It's used by all the complexes, but yes.

14 Q. And I just want to go through this form so that we can all
15 understand what this form is showing us. To the left but in
16 redacted form, the first column we have the inmate number and
17 next to it the inmate name. Is that correct? 01:14PM

18 A. Yes.

19 Q. And then next to that there's the receiving unit?

20 A. Correct. 01:14PM

21 Q. And then there's a column for KOP meds. Do you see that?

22 A. Yes, I do.

23 Q. And in this particular example, there's, for particular
24 inmates, there may be an N or a Y. Do you know what that
25 indicates? 01:14PM

1 A. It would be a yes or a no. So it would -- whether they had
2 those or not. Not every inmate getting transported is going to
3 have medications.

4 Q. So if we take the first line, the first inmate whose name
5 is redacted, and it says KOP meds, no, does that mean that
6 particular inmate was not prescribed any KOP meds?

01:15PM

7 A. Correct. And then -- yes. Where it says missing
8 medications, it says it's not applicable.

9 Q. And there's also a column for the IR number, is that
10 correct?

01:15PM

11 A. Yes.

12 Q. And what is that used for?

13 A. If there was a discrepancy in it then that IR would detail
14 out what the discrepancy was.

15 Q. And on this, on Page 1 of Exhibit Number 77, there are
16 columns that have, for instance, like the second line says 18
17 and dash and some numbers. Does that indicate what the IR
18 number is?

01:15PM

19 A. Yes. And so it would be one IR generated for each issue
20 that they -- and they could list more than one medication, but
21 one for each inmate.

01:15PM

22 Q. And next column says "next dose due by" and there's a date
23 and time. Do you know what information that is to provide?

24 A. Yes. That's the next dose is due that same day, and then
25 the next column a time. It would be whether it's an a.m. or

01:16PM

1 p.m. dose.

2 Q. And then the next column it says, at the very top, it says
3 "ADO" for the next two sections. What does that mean?

4 A. That's the administrative duty officer. That is to have
5 them to pay attention to what's being put into here because
6 this is the action that was taken. 01:16PM

7 Q. And the previous columns that we discussed about starting
8 with inmate number and ending with "next dose by" at the top it
9 says, "Corizon intake nurse." Do you see that?

10 A. Yes. 01:16PM

11 Q. Is that information in those columns under the Corizon
12 intake nurse section, is that information that's actually
13 filled out on this form by the intake nurse?

14 A. Yes, it is.

15 Q. And then going back to the two sections delineated under
16 the ADO header, you have action taken, which you talked about,
17 and then time. Is that just to indicate what time the action
18 was taken? 01:16PM

19 A. Yes, it is.

20 Q. Now, at the very bottom of the form do you see three
21 signatures? 01:17PM

22 A. Yes, I do.

23 Q. So the first one states complex shift commander signature.
24 What is a complex shift commander's duties?

25 A. The shift commander would manage the shift for that 01:17PM

1 particular day. In this particular case, they would be someone
2 that was just ensuring that that inmate received what they were
3 supposed to receive.

4 Q. There's also a signature line for the ADO, and you talked
5 about the ADO before?

01:17PM

6 A. Yes.

7 Q. And Corizon staff signature. Do you see that?

8 A. Yes.

9 Q. Do you know at what point in time when this daily transport
10 report is generated what -- at what point do people actually
11 sign off on the report?

01:17PM

12 A. They shouldn't sign off on it until later in the day when
13 things have been accomplished. One of the processes with this
14 form -- and this form was developed originally but then tweaked
15 and modified a little bit after we got the position for the
16 coordinator position. After he looked at everything and saw
17 what was going on he decided to make it a little bit more
18 comprehensive on how we did things and making sure that we had
19 the signatures.

01:18PM

20 So it should be later in the evening. It should
21 ensure that certain things have been done. And so the Corizon
22 nurse would be responsible for ensuring that the medication was
23 dispensed to the proper inmate and that the record of that was
24 indicated in eOMIS so that when they sign off on it, that's
25 basically saying all these things were accomplished.

01:18PM

01:18PM

1 Q. Now, if you take a look at Page 1 of Exhibit Number 77, and
2 five lines down, because we have the inmate's name redacted,
3 it's probably easier to direct you to the right-hand column
4 where it says "Time 1954," do you see that?

5 A. Yes, I do.

01:19PM

6 Q. If you track that over to the left, under "missing
7 medications yes or no," for this particular inmate there is a
8 Y. Do you see that?

9 A. Yes, I do.

10 Q. So does that indicate that there was a discrepancy that the
11 inmate did not arrive with medication?

01:19PM

12 A. Yes. That would indicate that.

13 Q. And for this particular inmate it was a KOP medication?

14 A. Yes, it was.

15 Q. Is that indicated by the Column 2 to the left that says KOP
16 meds and there's a Y there?

01:19PM

17 A. Yes.

18 Q. And then we see that there is an IR number written in,
19 correct?

20 A. Yes.

01:19PM

21 Q. Would that indicate to you that an IR was written regarding
22 this discrepancy?

23 A. Yes, it would.

24 Q. And then to the right under the column for next dose by, it
25 says "2-12-18" and "p.m." What does that mean to you?

01:19PM

1 A. Well, the dose for that particular medication would be that
2 day in the afternoon, the p.m. dose.

3 Q. And I know that this document through copying is little
4 difficult to read, but are you able to see what action was
5 taken with respect to this particular inmate?

01:20PM

6 A. Yes. It looks like the pharmacy was notified and they
7 actually had to go to two Walgreen's to get it.

8 Q. And what does the -- under time where it says 1954, what
9 does that denote?

10 A. That would denote the time that that actually occurred.

01:20PM

11 Q. So the inmate was actually given --

12 A. Yes.

13 Q. So translation to non-military time, at 7:54 p.m. the
14 inmate did receive the medication?

15 A. Yes. That's correct. 1954 would be 7:54, yeah.

01:20PM

16 Q. And then if you go down following the time column to the
17 right, down to the next one where it says "1953"?

18 A. Yes.

19 Q. Follow over to the left, here's another inmate that
20 indicates that there was a missing medication. Correct?

01:21PM

21 A. Correct.

22 Q. And that an IR was written?

23 A. Yes, it was.

24 Q. That the inmate's next dose was a p.m. dose for 2-12 of
25 2018?

01:21PM

1 A. Yes, it was.

2 Q. And are you able to tell us what action was taken with
3 respect to that discrepancy?

4 A. Yeah. It looks like the same. It was they had to go to
5 Walgreen's to get the medication.

01:21PM

6 Q. And does this form indicate whether or not the inmate did
7 receive a p.m. dose that day?

8 A. Yes, it would then 1953, one minute prior to the other one.

9 Q. Now, if you go down to the next two on the time column,
10 1651 and 1737 hours, do you see those two inmates?

01:21PM

11 A. Yes, I do.

12 Q. If you follow this one over to the left, under the missing
13 medications column, it says "no" for both inmates, yet IRs were
14 written. And for both inmates it says that the LPN Jensen
15 verified meds were given.

01:22PM

16 Do you know -- can you explain to us what this means
17 where on the form it doesn't indicate that medications were
18 missing, yet there is some action taken?

19 MS. EIDENBACH: Objection, Your Honor. Foundation.

20 There's no way that Mr. McWilliams knows why the LPN or how she
21 was able to verify it. He can only tell us what he is reading
22 before him.

01:22PM

23 THE COURT: Well, it's a "do you know" question that
24 starts out but then is "can you explain." So let's go to the
25 do you know first. Do you know what this means on this form?

01:22PM

1 THE WITNESS: I don't know exactly because it's more
2 than one thing it could, but there's a general thing that it
3 could be.

4 THE COURT: Well, then we don't think you need to
5 answer. The objection is sustained.

01:23PM

6 BY MS. LOVE:

7 Q. Next to time stamps are down -- or the time columns,
8 there's an 1856. Do you see that?

9 A. Yes, I do.

10 Q. If you follow that over for this particular inmate, it
11 indicates that there was a missing medication, correct?

01:23PM

12 A. Yes.

13 Q. That an IR was written?

14 A. Yes.

15 Q. That the next dose was due by 2-12-18, p.m.?

01:23PM

16 A. Yes.

17 Q. And are you able to tell us what action was taken?

18 A. It looks like this particular medication, they had it in
19 stock, in clinic stock, and so they retrieved it and
20 administered it at 1856.

01:23PM

21 Q. So the inmate did receive a dosage that evening, correct?

22 A. Correct.

23 Q. Then the last one on Page 1, or in the time column of 1358,
24 if you follow that one over there's another medication
25 discrepancy?

01:24PM

1 A. Yes.

2 Q. Or actually, did this one, in the missing medication column
3 it indicates no. Do you see that?

4 A. Yes, it looks like they had their KOP meds with them, yes.
5 It's an a.m. and the missing medication, yes.

01:24PM

6 Q. Do you know what action was taken for that one according to
7 this form?

8 MS. EIDENBACH: Your Honor, objection. Foundation
9 again. It's, once again, asking Mr. McWilliams to speculate on
10 whether -- or what the LPN did.

01:24PM

11 THE COURT: Do you know, sir?

12 THE WITNESS: In this one it actually tells what they
13 did. In this one it says that the intake nurse, actually LPN,
14 administered the dose. So it looks like they gave --

15 THE COURT: Hold on just a second. You are using
16 terms that are a little bit troubling because you are saying
17 "it looks like" rather than saying it is.

01:24PM

18 THE WITNESS: That's what it says. It says the LPN
19 intake gave --

20 MS. EIDENBACH: Your Honor.

01:25PM

21 THE COURT: Hold on just a second.

22 THE WITNESS: -- p.m. dose on 2-12-18 at 1358 is when
23 they gave the dose to them. So that would indicate that that
24 dose was given to this inmate at 1358 on 2-12.

25 THE COURT: But you had nothing to do with the

01:25PM

1 preparation of this document that indicates that, right?

2 THE WITNESS: No. I didn't write this document.

3 THE COURT: You are essentially doing what I could do
4 and read what it says, but I have no way of knowing whether
5 it's accurate or not. I don't know. Can you lay a foundation
6 for this witness? 01:25PM

7 MS. LOVE: Your Honor, we offer this exhibit and we
8 offer it into evidence as per his testimony as to what are the
9 actions from the operations side taken to address PM 35 and the
10 systems put in place. 01:25PM

11 THE COURT: Well, he can certainly testify about the
12 systems put in place. He can't really testify about whether or
13 not in individual incidences these corrective measures have
14 been taken because he's reading a report for which no
15 foundation is laid. So to the extent that the objection is
16 raised with respect to the truth of whether or not this
17 corrective action was taken, that objection will be sustained.
18 With respect to overall procedure he can testify about the
19 procedure he's giving examples of he's reading this but I'm not
20 going to take anything he said as being pertinent or
21 determinative of the fact of that being done because I don't
22 have a witness here who can testify about the foundation of
23 that document. 01:26PM

24 MS. LOVE: Defendants offer this exhibit into evidence
25 with the caveat that you just explained that we offer this 01:26PM

1 evidence to show the systems that ADC is taking from the
2 operations side and how information is tracked and -- tracked
3 and action taken, not for the purpose of Carson McWilliams
4 testifying as to what an LPN did on that particular day.

5 MS. EIDENBACH: Your Honor, if that is the purpose for
6 which defendants are entering this exhibit then I'm not sure
7 how this line of questioning is relevant because we're going
8 through instance by instance with Mr. McWilliams testifying
9 about what actions were taken and what happened on that day and
10 that time with a particular prisoner.

01:26PM

01:27PM

11 So I think if that's how -- if that's what defendants
12 want to offer this for, then we would object to this line of
13 questioning.

14 THE COURT: It doesn't make sense for us to go through
15 inmate-by-inmate experience because of the reasons just
16 expressed by Ms. Eidenbach. So the information that you are
17 trying to convey in this presentation is one that this witness
18 is competent to testify that there is a mechanism in place that
19 is supposed to address this. Whether or not it worked in these
20 individual cases, I don't know because I don't have a
21 foundation for that. So I'm well aware of the nature of the
22 objection and sensitive to that issue.

01:27PM

01:27PM

23 You may continue.

24 MS. LOVE: And defendants move to admit this exhibit
25 for your consideration for the purpose of evidence as to ADC

01:27PM

1 taking reasonable efforts to comply with your Order to Show
2 Cause and the systems put in place, for that limited.

3 THE COURT: Any objection?

4 MS. EIDENBACH: Only insofar as it's being put in in
5 any way about the veracity of each individual entry, since we
6 have no way of verifying whether those are accurate or true.

01:28PM

7 THE COURT: I think that that limitation is more apt
8 than the one that you offered, Ms. Love, because yours is
9 broader because it seems to suggest that this is evidence of
10 reasonable steps, a separate component of whether those
11 reasonable steps were taken, whether it actually is accurate.
12 And so we know that there is, from this witness, a mechanism
13 that was put in place. We don't know whether or not it
14 actually worked. But we have a form that suggests that there
15 is somebody who indicated actions that were taken but we can't
16 really take that into evidence because we don't have a witness
17 who can lay the foundation for it.

01:28PM

01:28PM

18 So subject to this reservation, the exhibit will be
19 admitted.

20 MS. EIDENBACH: Thank you.

01:28PM

21 BY MS. LOVE:

22 Q. And Division Director McWilliams, is it your opinion that
23 ADC from the operations side has taken all reasonable steps to
24 comply with the stipulation and with the Order to Show Cause
25 with respect to Performance Measure 35 and medication

01:29PM

1 transports?

2 MS. EIDENBACH: Objection, Your Honor. This calls for
3 a legal conclusion.

4 THE COURT: Well, sir, we're not asking you to fill in
5 information that would fit a legal definition. This is a lower
6 case reasonable steps that your lawyer is asking do you think
7 the Department of Corrections has taken reasonable steps. It's
8 not going to be determinative of the legal issue but just your
9 opinion about understanding those two words, lower case,
10 meaning they are not some defined term but whether you think
11 the State took all reasonable steps.

01:29PM

01:29PM

01:29PM

01:30PM

01:30PM

12 THE WITNESS: Yes, I do think so.

13 THE COURT: And do you think they took them rather
14 late?

15 THE WITNESS: No, I do not.

16 THE COURT: Well, I have to ask why that is, because I
17 imagine you have been aware for a considerable amount of time
18 of probably two things: One, I have been very concerned about
19 this performance measure, and I have raised a lot of concern
20 about it early on for years, literally for years. And I have
21 also expressed great frustration as to why what seemed to me to
22 be a solvable problem wasn't solved sooner. And the reason I
23 thought it was solvable was because I knew that you managed
24 tens of thousands of prisoners on a daily basis, and that you
25 did some really significant things on a routine basis and that

1 is you moved them about from complex to complex. And you had,
2 I have come to understand very quickly, sensitive issues
3 addressed with those movements. You had to make sure you
4 didn't move someone into a yard where there was a danger
5 because of that movement.

01:30PM

6 So you paid attention to what was happening with that
7 move, and it always was amazing to me if you could get all
8 these other things, apparently, in place that with all the
9 resources you had available to you, I couldn't understand why
10 it was month after month I see failures. In fact, if I look at
11 what happened in January of 2018, two complexes failed here.

01:31PM

12 And so here we are, this measure with this committee
13 that meets on a daily basis that was put in place, again, I
14 would say rather late, November, December of 2017, and even it
15 hasn't resolved in compliance at two complexes in January of
16 2018.

01:31PM

17 So I guess I can understand that you think that
18 reasonable steps have been taken. I will maybe have some issue
19 with that because we still haven't resolved the issue such that
20 we have complex at -- compliance at two very large complexes.

01:31PM

21 But I guess I have to ask you to explain to me how is it
22 reasonable that you took so long to take these steps when you
23 knew that this was a big issue, a necessary issue, that it
24 mattered. I don't just say "big issue" because, oh, this was
25 something that was written in the stipulation. It was put

01:32PM

1 there and negotiated by the parties because of something that
2 everybody knows. And that is if you have been prescribed a
3 medication and you are taking it on a daily basis, for many
4 medications it's very dangerous to not have that medication on
5 a daily basis.

01:32PM

6 And so this chronicle that has been part of this case
7 on the failure of this performance measure is something that is
8 based upon the importance of the performance measure. That's
9 one of the reasons I have been so focused on it. And I have
10 been greatly puzzled by how it is that it took so long. So
11 when you say you don't think it was delayed, I want to
12 understand how can that be a reasonable view?

01:32PM

13 Do you have any response to what I have said?

14 THE WITNESS: Yes. It's a fairly complicated
15 question.

01:32PM

16 THE COURT: Actually, if you want I can boil it down
17 to two simple things: I can boil it down to, one, why is it
18 that it took so long for you to get into place where you had
19 these measures you talked to me about that you think are
20 reasonable? Most of them you have talked to me about, sounds
21 like the ones you have talked about have been mostly October
22 going forward. And this committee you talked about was late
23 November/December.

01:33PM

24 So how is it that that's just really not so late, and
25 how is it that it just has been something you still can't even

01:33PM

1 solve here in our most recent reporting? Actually, it's not
2 the most recent reporting, the second most recent reporting. I
3 mean, I don't want you to think it's hugely complex because it
4 doesn't seem that way to me. So if you are thinking it's
5 complex, I'm not communicating well, because I think the
6 problem is not complex. I mean, identifying the problem, what
7 we know, and again, I mean, I think you could say the same
8 thing about complexity with respect to moving somebody who's
9 got a criminal history pages maybe dozens of pages long,
10 somebody goes through those dozens of pages before you move
11 somebody, I would imagine, to see whether or not they have some
12 incident in the past that would be they would kill one other if
13 they got on a lot together. Is that fair, reasonable, somebody
14 does that?

01:33PM

01:34PM

15 THE WITNESS: Yes. Time frames aren't the same, but
16 yes.

01:34PM

17 THE COURT: Why can't we do the same kind of attention
18 to detail with respect to the health and safety of these
19 inmates in a different category, and that is that they get
20 their medicine?

01:34PM

21 THE WITNESS: In my opinion we certainly are taking
22 the steps. And it didn't just start in November. Some
23 components didn't start until then. But we actually started
24 dealing with this early in the summer of last year with the
25 idea about how we could make this work smoother. And then we

01:34PM

1 did the first direction out about the process of going through
2 the process that's in the DI in 361, that came out in August.
3 And then it got refined and it -- the DI came out in October.
4 Along with that, we also had to select someone to be this
5 coordinator. This is not an easy job, the coordinator
6 position. We had to get someone with a real unique skill set,
7 someone that we also knew we had faith in that could do some of
8 these things.

01:35PM

9 So that took a little bit of time because that person
10 had a job already, to get them out of that job and put them
11 into this job. Then they had a personal issue, we had to wait
12 a couple of weeks for them to physically start working. So
13 they didn't physically start working until the middle of
14 November.

01:35PM

15 Then the processes that we have to do with that,
16 there's a whole lot of moving parts in this. There's people
17 from all around the state, transportation. There's people that
18 are doing inventories in the evening time in different units
19 that are involved with the KOP side of things. There's a bunch
20 of medical people involved in it and, of course, transportation
21 officers.

01:35PM

01:36PM

22 With the volume of moves and all the people that are
23 involved in this, I do think we are taking progress. In fact,
24 I look at the preliminary numbers for February, and I see that
25 everyone was over 85 percent in that month. So I do think it's

01:36PM

1 improving. And I think it will continue to improve.

2 So I believe, yes, we have put things into place,
3 everything we could possibly do to do that and we continually
4 monitor and try to make this work.

5 THE COURT: Why did it take three years?

01:36PM

6 THE WITNESS: Well, I think as part of the
7 stipulation, I think when we went into this stipulation,
8 originally it was a four-year type of plan for things to occur.
9 We knew we weren't going to be able to flip a switch.

10 THE COURT: Again, I will have to say, I can argue
11 with the lawyers. I don't want you to say that. I don't know
12 where that notion comes from that this was a four-year plan.
13 No. Somebody has been saying that, and that's not true. The
14 stipulation didn't contemplate a four-year plan. It
15 contemplated that you would solve the problem immediately once
16 the stipulation was entered into. There was a plan of how you
17 can get out of the stipulation.

01:36PM

01:37PM

18 But this idea of, oh, we have four years to work on
19 it, that's a notion that was made out of whole cloth. I was
20 there when the case was settled. I knew what the contemplation
21 was. There was no idea that we would have four years to get
22 this right. That's a preposterous thing. And to the extent
23 that anybody in the Department of Corrections thinks that's
24 true, it's not from the judge who is presiding in the case.
25 You don't have four years of a run of this.

01:37PM

01:37PM

1 Otherwise, why would I be doing what I have been doing
2 every month for months now, years now, where I have been
3 addressing it every single month if I had to wait four years to
4 see what would happen. No. That's nuts. That's never been
5 part of this deal.

01:37PM

6 THE WITNESS: I don't think there was four years to
7 get it right. There was a time frame though.

8 THE COURT: What do you mean by the four years?

9 THE WITNESS: Well, I don't think that we can flip a
10 switch and change that type of stuff. There's too many people
11 involved for that to happen. So I believe that it takes time
12 to make all of these things, accomplish stuff. And, of course,
13 my side of the house with the conditions of confinement, the
14 maximum custody site, we look back and look at how that
15 progressed, how we did things. And we have done the same thing
16 with our medical side of it. The improvement and progression
17 that has been made over the time period is significant, you
18 know. It really is.

01:38PM

01:38PM

19 So that part of it, I do think people are trying very
20 hard, and I do think they are making a difference and I do
21 believe that this will eventually be accomplished. But I don't
22 think it's as easy as some people think. I don't think it is.

01:38PM

23 THE COURT: Well, it's important for me to have this
24 conversation with you because I can't go speak at a loud
25 speaker to all of the Department of Corrections employees. But

01:39PM

1 I do have opportunities to talk to people who are witnesses in
2 the courtroom. So I do take that opportunity when it is
3 possible and is afforded to me. And one of the things that I
4 hope that I can communicate to you is that when the director
5 promised in the stipulation to effect these changes there was
6 no expectation other than they would happen at that time.
7 There was a significant appropriation to do it. There was an
8 identification of what the problem was.

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9 And the whole mechanism of having me involved in this
10 or any judge who was to be the enforcer of the stipulation was
11 not contemplated to be sort of a regular feature. It was what
12 would happen if things didn't work against everybody's
13 expectation. So it wasn't the idea that this would be a work
14 in progress that would take three years accomplish. That was
15 never part of this.

16 And part of what I have experienced that you haven't
17 experienced is what started out as periodic and became monthly
18 and then became more regular. I was hearing from the lawyers
19 for the State they were proposing -- and some day maybe when
20 the case is over I can go and show you how over the months I
21 would receive reports and statements from defense counsel
22 saying this is what we're doing with respect to this particular
23 performance measure. I'm making sure the inmates are getting
24 their medications.

25 And every month there was some kind of tweak or some

1 kind of suggestion to me that we were on top of it and the
2 problem is going to be solved. And here I am three years later
3 and I have maybe the first time I have gotten all the complexes
4 in compliance, but this is three years. And it's after I have
5 been told monthly that we have got it. And here's what our
6 next proposal is and it doesn't work. Then the next one
7 doesn't work.

01:40PM

8 Then I hear from you that it looks like people are
9 really getting their attention on this. There's a meeting
10 every single day at every complex about this problem. And I
11 think to myself, finally. And then I ask you, why is it now,
12 here, that this thing happened in late November, in December,
13 why did it take somebody this long to figure out this is what
14 was necessary to get it done and if it does affect it?

01:40PM

15 And so this is not really a question. This is me
16 speaking to you as I have an opportunity to speak to you to let
17 you know a couple of things, that this frustration has been
18 real and it also has not been something that was ever
19 contemplated by the stipulation. The stipulation was a promise
20 from the director to make sure this measure was satisfied. And
21 the way I would get involved is if it turned out you weren't
22 making the mark in a certain percentage of the cases. And once
23 that happened, I would look into it and that has happened with
24 so many of the facilities, so many of the inmates, that this
25 has become just really a major focus of this activity.

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1 So I'm glad, if it's true, that the February numbers
2 show compliance at the complexes but it doesn't really address
3 what is an important issue here. And that is why it took so
4 long and why the suffering that was imposed for it to take so
5 long occurred and whether there should be a remedy for that.

01:42PM

6 Thank you. You may continue.

7 BY MS. LOVE:

8 Q. Division Director McWilliams, you testified either today or
9 the prior time that there is approximately 600 intra-facility
10 transfers statewide a week?

01:42PM

11 A. Yes.

12 Q. Simple math, about 2400 a month?

13 A. Yes.

14 Q. And I believe you testified the last time around that over
15 the course annually it's an average of 30,000 intra-facility
16 transports per year. Is that correct?

01:42PM

17 A. That's correct.

18 Q. And are you aware of the four complexes that are subject to
19 the Order to Show Cause in December, are you aware of how many
20 met or exceeded the current 85 percent stipulation compliance
21 threshold?

01:42PM

22 A. I don't have it memorized, but I could write some numbers
23 down here. So I have got the percentages for the month of
24 December here.

25 Q. How many complexes met or exceeded the current 85 percent

01:43PM

1 compliance rate with the stipulation for the month of December?

2 A. In December, there were two that were above the percentage.

3 Q. Which facilities and what percentage?

4 A. It would have been Florence at 86 percent and Tucson at 91
5 percent.

01:43PM

6 Q. And are you aware that per the stipulation there was a
7 graduated compliance percentage with the stipulation where at
8 certain times it was 75 percent then 80 percent and currently
9 85 percent over the last few years?

10 A. Yes, I am.

01:43PM

11 Q. Are you aware of whether or not any of the four complexes
12 at issue for Performance Measure 35 in the Order to Show Cause
13 met or exceeded the 85 percent compliance threshold for the
14 month of January?

15 A. In January Eyman was at 88, and Tucson was at 90.

01:44PM

16 MS. EIDENBACH: Your Honor, excuse me. We haven't
17 established how Mr. McWilliams knows these numbers. And while
18 Ms. Love's questions are phrased in "are you aware of" Mr.
19 McWilliams is then reading information from his notes into the
20 record. We do have documents that contain these that might be
21 more appropriate for him to rely on in testifying to this.

01:44PM

22 MS. LOVE: I can lay foundation.

23 THE COURT: Also, you can pay attention if he says
24 something that isn't accurate because you know and you have in
25 hand. What this is part of Ms. Love's presentation is to try

01:44PM

1 to meet the burden she has with respect to the OSC. And so
2 she's using this witness as a way to present these numbers to
3 the judge as part of her presentation. I'm going to give her
4 some leeway to do that.

5 So the objection is overruled.

01:44PM

6 BY MS. LOVE:

7 Q. As division director, do you, on any sort of basis, review
8 the monthly reports as to stipulation compliance levels for the
9 performance measures at issue for the stipulation?

10 A. Yes. I receive those reports and do review them.

01:45PM

11 Q. And do you, in particular, review the compliance levels for
12 Performance Measure 35?

13 A. Yes, I do.

14 Q. And do you look only at the four that are subject to the
15 Order to Show Cause, or do you look at all 10 complexes?

01:45PM

16 A. I look at all 10 complexes.

17 Q. And the statistics you gave us for December and January,
18 did you derive those statistics from looking at the reported
19 compliance levels for those months?

20 A. Yes, I do did.

01:45PM

21 Q. You talked to us earlier with respect to Performance
22 Measure 35 that there are daily meetings between Corizon folks
23 and wardens and leadership at the complex level regarding daily
24 happenings related to medical. Is that correct?

25 A. Yes.

01:46PM

1 Q. And are issues beyond Performance Measure 35 and medication
2 transports discussed in those daily meetings?

3 A. Yes, they are.

4 Q. What other issues are discussed, if you know?

5 A. There could be issues about, transportation issues, sending
6 out people for follow-up consults. There could be issues
7 involving nurse's lines. There could be various types of
8 things, internal prescriptions being refilled, anything that is
9 some sort of an issue or an inmate maybe had brought up on a
10 tour or the deputy warden or the warden is walking around the
11 complex or something that is a medical side from Corizon once
12 it's talked about.

01:46PM

01:46PM

13 Q. Are those daily meetings required to be conducted at any
14 certain portion of the day?

15 A. We want them in the mid-afternoon, so they normally occur
16 around 3:00.

01:46PM

17 Q. Why is that that you want them to occur in the
18 mid-afternoon?

19 A. Because the bulk of the transports have been completed by
20 then so we would know a picture of any discrepancies so that we
21 would have the time to correct those in the same day.

01:47PM

22 Q. As far as the wardens of the 10 state-run complexes, do the
23 wardens regularly meet together to discuss operations issues
24 that may affect all 10 complexes?

25 MS. EIDENBACH: Objection. Foundation.

01:47PM

1 THE COURT: Do you know whether or not the wardens of
2 the 10 state complexes regularly meet together to discuss
3 operations issues that may affect all 10 complexes?

4 THE WITNESS: Yes, I do.

5 BY MS. LOVE:

01:47PM

6 Q. How do you know that?

7 THE COURT: Overruled.

8 THE WITNESS: Couple of ways. One of them is I
9 conduct meetings myself with all 10 wardens about five or six
10 times a year. The RODs conduct meetings every Tuesday right
11 after I do a management meeting with the regional directors.

01:47PM

12 And they do a meeting in the afternoon that's a video
13 conference meeting with their respective wardens about the
14 information that we have talked about that morning.

15 BY MS. LOVE:

01:48PM

16 Q. Do you know whether or not in these weekly meetings
17 operations that may affect compliance with the stipulation, do
18 you know whether that is a subject matter that is discussed?

19 A. Yes, it is discussed. I have participated in some of those
20 meetings from time to time, and those are talked about.

01:48PM

21 Q. How long have weekly meetings with all 10 complex wardens
22 and the regional operations directors, how long have those been
23 going on?

24 A. Since we had complexes, so I would say since early '80s.

25 Q. So this is not a meeting that was started because of the

01:48PM

1 Order to Show Cause order?

2 A. No, it wasn't.

3 Q. Do you, yourself, as division director, participate in
4 meetings where Corizon leadership and ADC leadership are
5 involved where compliance with the stipulation is discussed?

01:49PM

6 A. Yes, I do.

7 Q. In what respect?

8 A. We have a meeting twice a month with Corizon leadership
9 where we talk about -- we gather information from around the
10 state in different complexes. And the RODs, myself,
11 participate in that, as well as Richard and sometimes Dr.
12 Taylor and Corizon staff. And we talk about issues that have
13 been presented to us from around the state.

01:49PM

14 Q. If there are operations issues that you become aware of as
15 division director that affect compliance with the stipulation,
16 in your duties as division director do you communicate those
17 issues to the director?

01:49PM

18 A. Yes, I do.

19 Q. How often do you meet with the director regarding
20 operations?

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21 A. I meet with the director about operational things daily.

22 Q. When the director testified there was some questions to him
23 posed about a period of time when the Department had a contract
24 with the University of Arizona hospital and that at some point
25 that contract went by the wayside. Were you aware of whether

01:50PM

1 or not the Department did, in the past, have a contract with
2 the U of A?

3 A. Yes, I was aware of a contract there.

4 Q. How were you aware of it?

5 A. I was a warden at the time, and it was originally developed
6 when the director returned to the Department in '09.

01:50PM

7 Q. Do you know whether or not the contract with U of A
8 Hospital, if it came to an end before or after the Department
9 ended self-operation of medical services?

10 A. It would have been prior to that.

01:51PM

11 Q. Do you have any personal knowledge as to why that contract
12 came to an end?

13 A. I met with them a couple of times at the university
14 hospital down in Tucson. It appeared to me that they were
15 frustrated with a couple of things. One of them is they didn't
16 feel like we were keeping a constant number of beds with them
17 for money purposes. They weren't real, I don't think, happy
18 with having armed people in their facility that didn't work for
19 them. So there was kind of a combination of things centered
20 around money and just some logistical things with it.

01:51PM

01:51PM

21 Q. Switching subjects now, has the Department taken any action
22 from the operations side to address the need for coordination
23 of transports of inmates to outside medical appointments?

24 A. Yes. We have done a couple of things. One of them is we
25 have given authority to our transportation coordinator so he

01:52PM

1 can move transportation teams and vehicles; buses, vans, cars,
2 whatever he needs to move, he can move those around the state
3 as he deems is necessary to do.

4 Along those lines we also meet with transportation
5 staff and hospital staff to coordinate the hospital stays and 01:52PM
6 also coordinate the outside transport or the outside contacts
7 with physicians. And we try to work those out by adjusting
8 people. So if it's a big need for it in one place, we can
9 adjust. If it's a smaller need we'll take away from those
10 places smaller. So we do that on a regular basis as well as 01:52PM
11 have that -- we have also tried to change some of the process
12 with, especially in proximity to the institution where the
13 inmate is coming from. It doesn't make a whole lot of sense to
14 send an inmate from Florence complex to Flagstaff to have a
15 medical procedure done. So we have worked with Corizon to try 01:53PM
16 to get physicians to do a couple of things; one of them be in
17 closer proximity to that facility or to get physicians to come
18 into the prison and do medical procedures and medical
19 follow-ups inside the institutions themselves. And both of
20 those have been done. 01:53PM

21 Q. Does every complex have a transport security team, so to
22 speak?

23 A. Every place but Florence and Eyman. Florence and Eyman is
24 combined. Every place else has an individual team.

25 Q. So does it work where each complex has a certain number of 01:53PM

1 transport vehicles assigned to that complex, or are they
2 running statewide with no particular designation to a complex?

3 A. No. There's a certain number of vehicles that are assigned
4 as well as personnel.

5 Q. What kind of vehicles does the Arizona Department of
6 Corrections have to transport inmates to outside medical
7 appointments? Are we talking cars? Vans? Buses? How does
8 that work?

01:54PM

9 A. Buses are normally used for just the inner transfer from
10 complex to complex. We have vans and we have vehicles, sedans.
11 The vans, we have some handicap vans. We have several of those
12 at different locations.

01:54PM

13 We have also now, I just purchased three of these.
14 We're going to buy more of them as money allows. And these are
15 vans that you buy the van. It's just a shell. The van has no
16 interior seating or anything. Then you take it to a company
17 and they retrofit it for you. And the ones we're getting have
18 three compartments with different access to each compartment so
19 you could actually move three different classifications of
20 inmates. You could move protective custody inmates in the same
21 vehicle with GP inmates and sex offenders. So there's security
22 mesh in between each compartment. Each place has its own door
23 to open and allow access in and out and they all have cameras
24 also in them so we can view the cameras.

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01:55PM

25 Q. How many of these vans have you purchased so far?

01:55PM

1 A. So far, three.

2 Q. Do you believe that the purchase of these vans that can be
3 retrofitted to transport persons of different custody levels
4 will aid in the efficiency of transporting inmates out for
5 outside medical appointments?

01:55PM

6 A. Yes, it will. Often times you see a transport vehicle, a
7 van, takes one inmate because let's say they are a sex
8 offender. And now we'll be able to take multiple inmates
9 because we can take more than one classification of inmate. So
10 that should help out with it, yes.

01:56PM

11 Q. How many officers are required to be present to do a
12 transport in a van?

13 A. Two.

14 Q. What about a sedan?

15 A. Two, unless it's a code red. If it's a code red, which a
16 code red is an inmate that is a real high profile inmate like
17 maybe they have escaped before and killed somebody or they are
18 a high profile death row inmate, those code red type inmates or
19 validated SGT, security group threat inmate, they have a third
20 person that drives a separate vehicle behind them.

01:56PM

01:56PM

21 Q. Now with respect to -- you testified to this somewhat
22 earlier. In a situation now where, let's say -- let me give
23 you a hypothetical. Let's say that Lewis complex has numerous
24 inmates that need to go out on a particular day for outside
25 medical appointments but there's more inmates than there are

01:57PM

1 literally vehicles available to transport. Has ADC addressed
2 this issue to increase the efficiency so that appointments
3 don't have to be cancelled?

4 A. Yes. Our coordinator would look at Perryville's movement
5 that day. They would look at Phoenix complexes. They would
6 look at Florence-Eyman if they had to go out that far and they
7 would adjust transportation teams and vehicles into the complex
8 that needed them.

01:57PM

9 Q. And when did this process start?

10 A. We started doing this probably about two months ago, about
11 the beginning -- maybe a little bit longer than that. Maybe
12 around the beginning of the year, shortly after the beginning
13 of the year, calendar year.

01:57PM

14 Q. Do you have plans to purchase additional vans that you
15 spoke of previously that can be retrofitted to transport
16 multiple custody levels?

01:58PM

17 A. Yes. Funds permitting, I plan to buy a few of those, maybe
18 three or four of them every year.

19 MS. LOVE: Your Honor, we have no further questions.

20 THE COURT: Thank you very much.

01:58PM

21 Now it's the opportunity for the plaintiffs' class
22 lawyers to ask questions.

23 MS. EIDENBACH: Your Honor, may I have just one
24 moment?

25 THE COURT: You may.

01:58PM

1 MS. EIDENBACH: Your Honor, we have no questions for
2 Division Director McWilliams.

3 THE COURT: Okay. Let me ask just a follow-up
4 question to what we talked about before. And that is that you
5 have this idea that you had four years to comply with the
6 stipulation. I will tell you I don't believe the lawyers in my
7 case have ever told me that. So I wondered where did that idea
8 come from?

01:59PM

9 THE WITNESS: Maybe that was not spoken exactly
10 like -- it's not four years to comply with things. It's
11 because the stipulation has percentages have progressed through
12 it. So yeah, we would think that when we see that, okay, you
13 don't have to be at 100 percent the first month. You have got
14 to make the measures, you know, try to make those. That's what
15 we were going for were those goals.

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01:59PM

16 And from the things that I reviewed a lot of
17 significant progress has been made. Hundreds of them have been
18 in compliance. And so I think there has been a lot of it. So
19 that's where I'm coming from.

20 THE COURT: There is no dispute that there has been a
21 great number of performance measures that have been completely
22 satisfied and that I have never ever been activated in my role
23 as being the person to try to fix things that haven't been
24 broken. But there are a significant number of performance
25 measures that go to real life and death issues that remain

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1 unresolved. And so I just wanted to see whether there was a
2 culture at the Department of Corrections, and you would maybe
3 be the best person to talk about this, that you really thought
4 that you had four years to get this all in place.

5 THE WITNESS: No, I don't think it's a culture that 02:00PM
6 believes that part of it. And I think we have a difference of
7 understanding of these things, like on the medication side of
8 this. To me there's a big difference if someone has some type
9 of, let's say, heart medication, really significant-type
10 medication or if it's a medication that someone takes that 02:01PM
11 might not be significant on life or death that day and they
12 decide to give it away on the yard. We have a certain amount
13 of that that occurs on a regular basis where inmates trade
14 those drugs for something else, or they sell them or they take
15 them against how they are supposed to be taken. They try and 02:01PM
16 get high off of them.

17 So those are different types of issues, and we look at
18 that. All the medication we know we have to comply with that.
19 That's not the issue at all. But there are other factors in
20 there. It's not just like someone loses the meds. A lot of 02:01PM
21 time, especially with the KOP meds, the DOTs are different, but
22 the KOP meds, the inmate might manipulate some of that also.

23 THE COURT: I guess when I hear you say that it makes
24 me wonder if somebody, as you described, is making a decision
25 among these medicines that have been prescribed for the inmate, 02:01PM

1 some of them are not so important. Who is making that
2 decision? Is it a medical person?

3 THE WITNESS: No one is making that statement. It's
4 just a statement.

5 THE COURT: What do you mean it's just a statement? 02:02PM

6 THE WITNESS: Let me give you an example.

7 Let's say a prescription is being written now for
8 dandruff shampoo. Okay. That might be important to the person
9 but I don't believe that that's as important as heart
10 medication. 02:02PM

11 THE COURT: So how many of the failures to meet these
12 performance measures have been associated with dandruff
13 shampoo?

14 THE WITNESS: There's been a few.

15 THE COURT: What, five out of hundreds? 02:02PM

16 THE WITNESS: There have been other ones that are
17 similar type things like Tums.

18 THE COURT: Tums is not a prescription medication.

19 THE WITNESS: I don't think it is.

20 THE COURT: No, it's not. 02:02PM

21 THE WITNESS: But it has been prescribed.

22 THE COURT: It's not a subject of my stipulation. The
23 monitors tell me when you fail it's when you fail to make sure
24 that a prescription medication is accompanying the inmate. And
25 so I have been reported about a number of those. And when you, 02:03PM

1 in your position, talk to me and say, well, you know, a lot of
2 these are dandruff shampoo, or a lot of them are inmates
3 trading meds on the yard, that makes me think you are not
4 taking this seriously. That's not for you to decide whether or
5 not the medical provider's prescription that the inmate have 02:03PM
6 this medicine is to be given to them because you think that
7 it's being traded on the yard by some number of people so it
8 can't be a real medication somebody is using, or it's simply
9 Tums or a dandruff shampoo.

10 That suggests to me that you don't understand how 02:03PM
11 serious this is. And I'm really very shocked to hear that
12 because I think when this performance measure was put in place,
13 it meant what it said and it's very clear. It says that if
14 somebody has been prescribed a medication you can't transport
15 them unless you have that medication with them. And this has 02:03PM
16 been an unbelievably intolerable situation for the time of the
17 stipulation. And here we are now, three years post, and in
18 January two of the biggest complexes have unbelievable failure
19 rates.

20 And so I don't think it's because of dandruff shampoo. 02:04PM
21 I don't think it's because somebody has made a decision even
22 though I don't think, from what you say to me here, I don't
23 think somebody should make that decision who isn't a medical
24 provider who says that for this medication we can transfer this
25 person and we know that it's okay. The problem is, nobody as 02:04PM

1 far as I can tell is making that decision.

2 So captured within this problem are not only the
3 dandruff shampoos, it's the medicine something absolutely needs
4 to have. So I have heard testimony about people who are on
5 drugs that cannot be ceased and they been ceased because the
6 Department has not been able to be comply with the performance
7 measure. And witnesses have testified here, I believe, or I
8 have seen it in affidavits. I cannot remember for sure.

02:04PM

9 Witnesses have testified in court that the medicines they
10 absolutely need are not transferred with them and there is a
11 delay that is impermissible with respect to what is the
12 standard protocol according to these affidavits or testimony.

02:05PM

13 So I'm very disturbed to hear somebody in your
14 position would say we can dismiss this because some number are
15 not prescription drugs really because they are just for
16 dandruff or they are being traded on the yard. Those problems
17 may exist, but if those problems exist, for instance, with
18 trading on the yard, there's a way to deal with that. You
19 examine everybody when they take the pill so you make sure when
20 you give it to them, if they are not KOP, you examine it. If
21 for some reason the Department has decided not to do that, I
22 don't understand why it doesn't do that because it causes
23 people like you to say, we don't know what's happening with the
24 meds that we give these patients so we have to assume that a
25 fair number of them are not using them. They are trading them

02:05PM

02:05PM

02:05PM

1 on the yard. So that means when we transfer people it's okay
2 for me to come into court and tell the federal judge that's one
3 of the reasons this hasn't been such a big focus of ours
4 because we know some number of them are trading them on the
5 yard. I hope that you appreciate how unacceptable I find that
6 to be.

02:06PM

7 THE WITNESS: And, Your Honor, I certainly don't want
8 you to think -- first of all, I didn't use any of those words
9 about things I don't think it's important. I do think it's
10 important. That's why we strive every day to try to make it
11 work. I would never -- we even try to get the dandruff shampoo
12 to work. So we make everything work is the goal. It's never
13 to say if this doesn't or that doesn't. No one makes a
14 decision like that and I didn't say that.

02:06PM

15 THE COURT: You did actually tell me as a reason as to
16 why this may not be so important. I don't know any other way I
17 can take those words that you said to me other than to mean
18 that I am saying to you, Judge, that some number of these
19 medications are being traded on the yard and some of them are
20 just not really significant medications because they are
21 dandruff shampoos or they're Tums. I don't know any other way
22 to take that based upon what you said.

02:06PM

02:06PM

23 So if there's some way I have misinterpreted what you
24 have said, tell me how I should try to evaluate those words
25 that you said other than the way that I took it, and that is

02:07PM

1 you are telling me some number of these medications are not
2 that important.

3 THE WITNESS: I don't think I used the word
4 "important." But they are not the same as what I said. And
5 I'm not saying that gives it an excuse or anything. We're not
6 trying to say, oh, gosh, that drug isn't something we think is
7 important at all. Every drug is important. We're trying to
8 say that, yes, we take it seriously and we do look at it daily
9 with all kinds of different eyes trying to make it work.

02:07PM

02:07PM

10 That's what, you know, there's all kinds of people involved in
11 this.

12 What the reality was that you asked how can something
13 happen and I said well, one of the things that can happen is
14 inmates can manipulate things. That's a reality. It doesn't
15 excuse it that we don't try to fix it. That's just a reality
16 of what prison is about.

02:07PM

17 THE COURT: Well, in fairness, because I have asked
18 you questions after both the State and the plaintiffs have
19 passed on you as a witness, I need to give them, both lawyers,
20 an opportunity to see if they want to ask any questions based
21 on what I have asked. Ms. Love.

02:08PM

22 MS. LOVE: No further questions.

23 THE COURT: Anything from the plaintiffs?

24 MS. EIDENBACH: No, Your Honor.

25 THE COURT: Thank you, sir. I appreciate your

02:08PM

1 testimony I appreciate you listening to me. I hope that you
2 have some tolerance with my intolerance because I have been
3 asked to be tolerant for a long time. And I have been told a
4 lot of things were going to happen, and so I have become --
5 cynical is too strong -- skeptical is probably the right word.
6 That's why I push back pretty hard because I have been told a
7 long time things were going to be fixed next month and what I
8 have found is they weren't fixed next month. So I have to be
9 skeptical because I have learned a lesson from being around
10 that track.

02:08PM

02:08PM

11 You may continue with your next witness.

12 MS. LOVE: Your Honor, defendants call Richard Pratt.

13 THE COURT: Thank you. Mr. Pratt, if you would kindly
14 return to the stand. Thank you, sir.

15 Welcome back, sir.

02:09PM

16 THE WITNESS: Thank you.

17 RICHARD PRATT,

18 a witness herein, having been previously duly sworn by the
19 clerk to speak the truth and nothing but the truth, was
20 examined and testified further as follows:

21 REDIRECT EXAMINATION

22 BY MR. BOJANOWSKI:

23 Q. Good afternoon, Mr. Pratt.

24 A. Good afternoon.

25 Q. I want to ask you some questions here to try and clarify

02:09PM

1 some things that were brought up on cross-examination.

2 Do you remember testifying about the amendments to the
3 contract Number 11 and 14, that would be plaintiffs' Exhibits
4 202 and 205. Those were contract amendments 11 and 14. Do you
5 remember those?

02:10PM

6 A. I do.

7 Q. And those talked about a CPI increase was provided to
8 Corizon as a part of the amendment. Do you recall that
9 testimony?

02:10PM

10 A. Yes.

11 Q. Do you know, in part, why that CPI increase was provided in
12 that contract amendment to Corizon?

13 A. CPI, cost per inmate, increase, it's an increase that will
14 help to offset rising costs of health care.

15 Q. And are you aware that health care costs during 2016 and
16 2017 were increasing?

02:11PM

17 MS. KENDRICK: Objection. Vague and foundation.

18 THE COURT: Overruled.

19 THE WITNESS: I have seen different studies, different
20 reports that health care costs rise approximately 5 percent per
21 year.

02:11PM

22 BY MR. BOJANOWSKI:

23 Q. Was part of the business decision to allow the increase to
24 occur in these amendments based upon an increase in costs to
25 provide health care?

02:11PM

1 A. Yes. As I testified before, it was a business decision
2 that was involved in allowing that increase.

3 Q. You had also indicated in cross-examination by a series of
4 questions that were repeatedly asked about whether you were
5 satisfied with Corizon's performance, and I think you indicated
6 no. Do you recall that testimony?

02:12PM

7 A. I do.

8 Q. Are you currently satisfied with their overall performance
9 with regard to the performance measures as a whole?

10 A. Currently on an overall basis, yes. I am satisfied. Based
11 on the current overall results that we're getting, 94 percent
12 compliance, I'd say that's a good score. Again, that's
13 overall. That is not to diminish the fact that I am
14 dissatisfied with certain performance measures and extremely
15 dissatisfied with a few of them that we continually miss the
16 mark on.

02:12PM

02:12PM

17 Q. And some of those ones that you are still dissatisfied
18 with, are those some that are contained in the Court's order of
19 October 10th, what I call the contempt order?

20 A. Yes.

02:13PM

21 Q. Are you striving to work with Corizon to focus in on those
22 measures to get them into compliance?

23 A. Yes. We have in the past, and we will continue to do that.
24 Yes.

25 Q. And the judge has expressed some frustration about, well,

02:13PM

1 how come it takes so long to get these things in compliance.

2 And I should ask you, when did you start working on getting
3 measures into compliance?

4 A. From the date of the stipulation. But I will tell you,
5 and, Judge Duncan, I share your anger and frustration at not
6 having these things done more quickly. I totally agree with
7 that. I get that. The thing that I would probably like to
8 impress upon you as my thoughts is these performance measures

02:13PM

9 involve people and people have to do the jobs. I don't know
10 that we actually had the right people in the mix for several

02:14PM

11 years. We have gone through a lot of different iterations on
12 the people that are involved in this process. At this point,
13 as of last fall, I think we do have the proper mix of people to
14 now start getting the job done.

15 Q. Is that being reflected in the numbers that we're seeing
16 since last fall?

02:14PM

17 A. Yes. Again, overall basis, we were sub 90 percent, and the
18 most recent results were 94 percent.

19 Q. Okay. You were asked by Ms. Kendrick about the gross daily
20 revenue of Corizon being approximately \$450,000 a day. Do you
21 remember that line of questioning?

02:14PM

22 A. I do.

23 Q. Do you know what their operating costs are on a daily
24 basis?

25 A. I specifically don't know the daily operating costs. I

02:15PM

1 know we get financial statements from Corizon in accordance
2 with the contract on a quarterly basis.

3 Q. And in the last couple or several quarters, what are those
4 financial statements showing you?

5 MS. KENDRICK: Objection. Foundation. He said he
6 didn't know the particulars.

7 THE COURT: Sustained. I don't see how this witness
8 is confident to talk about those financial statements.

9 BY MR. BOJANOWSKI:

10 Q. Well, have you reviewed the financial statements that were
11 provided to you?

12 A. I have been provided the information that's in the
13 financial statements from my staff, yes.

14 Q. And what information have you received with regard to
15 those?

16 A. They indicated that there was a loss in the Arizona
17 contract.

18 Q. For how many quarters?

19 A. The last two that I'm aware of. I wouldn't want to speak
20 to more than that because I'm not sure.

21 Q. You were also -- there was some inquiry made during
22 cross-examination as to the removal of the incentives in the
23 contract. I think we're talking about carrots and sticks and
24 such. Do you recall that?

25 A. I do.

02:15PM

02:15PM

02:15PM

02:16PM

02:16PM

1 Q. You also, I believe, indicated at some point that the
2 incentives will run out.

3 A. Yes. There was a cap of three and-a-half million dollars
4 on the incentives.

5 Q. Is the stick going to remain?

02:16PM

6 A. Yes. The stick will remain.

7 Q. Is it going to remain into the future, the foreseeable
8 future?

9 A. Yes. There is no cap on the sanctions, and they will
10 remain that way in the future.

02:17PM

11 Q. What about the staffing offsets?

12 A. Staffing offsets will also remain in the future and they
13 will be at 100 percent of the staffing levels.

14 Q. Do you have Exhibit 103 in front of you by chance?

15 MR. BOJANOWSKI: May I approach?

02:17PM

16 THE COURT: You may.

17 Mr. Bojanowski, could you pause for just a moment?

18 Could I ask Ms. Selzer or Ms. Brown, whoever is here, to come
19 help me find -- I couldn't find 103. I have got a 103 that's
20 the wrong one, I think.

02:18PM

21 MR. BOJANOWSKI: If I may approach, Your Honor, to
22 show you what it looks like.

23 THE COURT: Yeah. I looked over and saw that that's
24 what it looked like. Thank you very much. Now I have found
25 it. Thank you so much.

02:19PM

1 BY MR. BOJANOWSKI:

2 Q. Would you go to Page 3 of that document?

3 A. Okay.

4 Q. And this is -- I think you testified earlier about this is
5 the tracking of the incentive that was initiated pursuant to
6 the contract amendment?

02:19PM

7 A. Correct.

8 Q. All right. And does it also show how many measures have
9 been brought into compliance since the incentives were put into
10 place?

02:19PM

11 A. Yes. This is based on the rules and the stipulation over
12 the past 24 rolling months if they haven't missed more than six
13 performance measures during that time frame or three in a row
14 during the most recent 18 months of that period.

15 Q. How many, total, have come into compliance under the
16 incentive program?

02:20PM

17 A. Since when?

18 MS. KENDRICK: Your Honor, I'm going to object to this
19 being outside the scope of redirect. The purpose of redirect
20 is not to simply repeat testimony from the direct examination.
21 And Mr. Pratt already testified to this exhibit in direct
22 testimony on March 26th.

02:20PM

23 THE COURT: And also he just told us about the 94
24 percent for January. So is there something beyond that that we
25 will get out of this, Mr. Bojanowski?

02:20PM

1 MR. BOJANOWSKI: I just wanted to, because there was
2 some questions with regard to the effectiveness of the
3 incentive program on cross-examination, I wanted him to
4 indicate to the Court that there were a total of 42 measures
5 brought into compliance since the program had been put into
6 place.

02:20PM

7 THE COURT: Is that true, Mr. Pratt?

8 THE WITNESS: Yes. That's correct.

9 THE COURT: All right. So we're done with the exhibit
10 now.

02:21PM

11 MR. BOJANOWSKI: We are done with that exhibit, Your
12 Honor.

13 THE COURT: Okay.

14 BY MR. BOJANOWSKI:

15 Q. Mr. Pratt, would you get Exhibits 105 and 106, please.

02:21PM

16 A. Okay.

17 Q. Going to 106 first, what is that?

18 A. 106 is an e-mail from Director Ryan to me dated Thursday,
19 November 2nd.

20 Q. Is there also an e-mail from you to Mr. Scot Ward as a
21 part of this on page -- on the second page?

02:22PM

22 A. Yes.

23 Q. And in that e-mail, did you indicate at all a request for
24 Corizon to provide real time reporting regarding the measures
25 that were subject to the Court order?

02:22PM

1 A. Yes.

2 Q. Would you read into the record that paragraph where you
3 directed them to do that?

4 A. "The plans for realtime reporting must be provided before
5 November 10th, however, so the Court can be appropriately
6 advised. The next status hearing is Tuesday, November 7th.
7 The 10th of November is not a deadline that will work and is
8 unacceptable."

02:23PM

9 Do you want me to continue reading?

10 Q. Go down to the paragraph where, "The director and I
11 also". . .

02:23PM

12 A. "The director and I also reiterate that all reasonable
13 measures must be taken to comply with Judge Duncan's October
14 10th, 2017 order. It is essential for Corizon to provide,
15 quote, 'realtime,' end quote, reporting regarding these
16 measures at the affected facilities in order to comply with
17 this order. If that means Corizon must add more monitors to
18 accomplish this, they must do so immediately. We will meeting
19 again with you on Monday, November 6th, to finalize the action
20 plans for all the PMs before the Court. I will need you to
21 report then what plans have been made."

02:23PM

02:24PM

22 Q. Go to Exhibit 105, and again, here's another e-mail from
23 you to Mr. Ward. Is this another demand for performance?

24 A. Yes.

25 Q. And in this, did you request that Corizon meet 100 percent

02:24PM

1 compliance with the performance measures?

2 A. I don't see 100 percent.

3 MR. BOJANOWSKI: May I approach the witness, Your
4 Honor?

5 THE COURT: You may.

02:25PM

6 BY MR. BOJANOWSKI:

7 Q. Why don't you indicate to the Court what your request was.

8 A. In the body of the e-mail, it indicates, "We reiterate that
9 the Court is requiring 100 percent compliance with these
10 performance measures which were found to be in substantial
11 noncompliance one year" says age, should be ago. "The Court
12 has made clear that nothing short of all reasonable measures
13 taken to comply with its orders will result in substantial
14 sanctions for the defendants."

02:25PM

15 Q. You indicated in previous testimony that there was a system
16 set up using Pentaho to gather some information?

02:25PM

17 A. Yes.

18 Q. For the realtime reporting?

19 A. Yes.

20 Q. Does the Department have the ability on its own to do
21 realtime reporting?

02:26PM

22 A. No.

23 Q. Why not?

24 A. The realtime reporting is drawn from eOMIS information
25 through a standalone program called Pentaho, which is

02:26PM

1 Corizon's.

2 Q. Were you told by Corizon that they would set up a system
3 and put it in place to do realtime reporting?

4 A. Yes. Corizon indicated they would make every effort to
5 come up with real time reporting for us. 02:26PM

6 Q. Do you know what was involved in establishing the real time
7 reporting?

8 A. On the surface, yes. It's going to be determining what
9 aspects of information in the electronic medical record would
10 need to be pulled out through Pentaho to be matched up against 02:27PM
11 the performance measure to see if compliance could be
12 determined.

13 Q. Can it be determined solely by Pentaho?

14 A. No.

15 Q. Why not? 02:27PM

16 A. Most of the performance measures have some aspect of
17 subjective information that's in them. And I testified to this
18 before. Pentaho works on numbers, dates, things that happen.
19 But without actually opening the record up and looking at each
20 individual case, you are not going to be able to truly 02:27PM
21 determine if the performance measure was met in that instance.

22 Q. Do you know approximately how many records would have to be
23 reviewed in a month to do a real time report on just the
24 measures that the Court is concerned with?

25 A. On the OSC measures, those 11 measures, the pool of 02:28PM

1 information right now, I believe, is about 17,000 per month.

2 Q. Do you know how much manpower Corizon dedicated to the
3 development of data collection and review of records?

4 A. I don't know specifically. I'm not exactly sure. But I
5 know it was probably five or six people that I'm aware of. 02:28PM

6 Q. And how about ADC? Did you set up some kind of somebody to
7 look at records as well?

8 A. Yes. I put Vanessa Headstream in charge on my team to help
9 with that process in vetting that information, and she
10 identified another three staff that are available for that 02:29PM
11 process as well.

12 Q. Did she, in fact, vet various records that were to be
13 utilized in preparing a report for the Court?

14 A. She did.

15 Q. And do you know how many records she looked at? 02:29PM

16 A. I believe she looked at 420.

17 Q. Do you know how long it took her to do that?

18 A. About 40 hours.

19 THE COURT: So that we can get a better appreciation
20 of the scope of work, it's not very helpful to be told, "about 02:29PM
21 17,000" because then we can't appreciate individual performance
22 measures in individual complexes because that number would seem
23 to be across the board whereas we have a much narrower focus.

24 Do you have the knowledge about the individual performance

25 measures at individual complexes about how many records would 02:29PM

1 have to be reviewed to look into those?

2 THE WITNESS: I don't have it broken down, Your Honor.
3 I know it was a total of 17,000.

4 THE COURT: That's not a very helpful number, though,
5 because we don't know what components are -- again, it sounds 02:30PM
6 like an off-putting number. But again, at some point if you
7 are not meeting the performance measures, as you write in your
8 e-mail, as I said also, you have to look at whether or not it's
9 happening. And the way to make sure that you are addressing it
10 in a way that can avoid the harm in the case beyond just the 02:30PM
11 patient harm -- the harm I'm referring to here beyond is the
12 sanction -- is you have to know on a realtime basis whether or
13 not it's happening.

14 So I guess in order for me to decide whether or not
15 you have taken all reasonable steps, I would have to know what 02:30PM
16 the number were with respect to individual complexes that were
17 at issue. For instance, if you are just one mark off of 85
18 percent, that would be different, perhaps, with the amount of
19 resources it would be reasonable to address it than, let's say,
20 you were at 20 percent and you would think, oh my goodness, 02:31PM
21 this is a fire so we're going to have not just one battalion
22 we're going to have six come in and deal with that, whereas you
23 may not think it would be appropriate to bring in six
24 battalions if you were one mark off.

25 Do you see what I'm saying, why that's important to 02:31PM

1 know this?

2 THE WITNESS: Yes.

3 THE COURT: Okay. Thank you.

4 BY MR. BOJANOWSKI:

5 Q. So just to clarify, the 17,000 records you are talking
6 about is the records that would have to be looked at pursuant
7 to the judge's order for realtime reporting. It doesn't
8 include other records at other facilities or other measures?

02:31PM

9 A. That's correct. And that's not just looking at the
10 noncompliance. That's the number of hits in the pool that
11 would show up that had to be vetted to determine compliance or
12 noncompliance.

02:31PM

13 Q. So if I understand what you are saying, the process would
14 be that you would first gather potential files that would be
15 eligible for review, and then you would subsequently review
16 them to determine compliance/noncompliance?

02:32PM

17 A. Correct.

18 Q. Okay. And so with regard to the measures that the Court
19 has issued its order, that's what you are talking about is
20 there's a pool of about 17,000 records that are contained
21 within the potentials that you would have to look at?

02:32PM

22 A. Correct. That's -- and again, that's compliant and
23 noncompliant.

24 THE COURT: I have been asked to take a break now so
25 we can give the court reporter an opportunity to -- as I have

02:32PM

1 mentioned in the past, she really is the one who works every
2 second that we're working. We get some breaks. She doesn't.
3 And we make it especially challenging when we, sometimes it is
4 done, don't respect the rules that we should only be speaking
5 at one time. So we tax in an unfair way.

02:33PM

6 So we'll take a 15-minute break and come back about
7 quarter to 3. Thank you very much.

8 (Recess from 2:33 p.m. until 2:53 p.m.)

9 THE COURT: Thank you very much. I'm sorry we kept
10 you waiting a couple minutes after you called and said you are
11 ready. The 17,000 records has touched upon an issue that we
12 have been focusing on, the Court meaning, we have been
13 ourselves somewhat concerned that maybe we're not focusing on
14 the exact right information because of the mechanism that gets
15 us to the place where the OSC is considered, we're not
16 necessarily appropriately relying on the mechanism that would
17 identify the areas of concern. The CGAR numbers, for instance,
18 are based upon a sampling mechanism where the stipulation calls
19 for at least 10 records to be drawn, whereas the OSC wants to
20 know about every single one of the failures. And so the
21 discussion about the 17,000 records and my follow-up question
22 about whether you knew about whether there were these
23 individual components -- not whether you knew, how accessible
24 that was in your mind presently or whether you had some piece
25 of paper now with you that told us, is of somewhat interest to

02:53PM

02:53PM

02:54PM

02:54PM

1 me because it tells me more accurate information with respect
2 to what I should be focused on with the incidence. And also it
3 helps me understand better about the appropriateness of the
4 sanction that I would be contemplating, because this mechanism
5 of the 17,000 where you said you looked at both compliant and 02:54PM
6 noncompliant of every single one that are the subject of the
7 OSC for each of these complexes would give me more accurate
8 information.

9 So if you have that information, I mean, we know the
10 ones that you have identified where there was a failure to meet 02:55PM
11 the performance measure, so we know the numerator. We don't
12 know the denominator. And you know the denominator. So I
13 wonder since the 17,000 is a sum, obviously there must be the
14 individual components of that sum. Somebody has that. Can we
15 get that so that we can see what the numbers were for the 02:55PM
16 individual complexes and for the performance measures that are
17 subject to the OSC?

18 THE WITNESS: Absolutely, and easily. We've got that
19 information.

20 THE COURT: If you could bring it tomorrow morning. 02:55PM

21 THE WITNESS: We can.

22 THE COURT: Okay.

23 MR. BOJANOWSKI: So I understand, Your Honor, you want
24 them -- I will call them hits of, you know, per facility and
25 per measure? 02:55PM

1 THE COURT: In order to get to the 17,000 number of
2 records that were reviewed, that means that there was this idea
3 of what individual records would have to be reviewed at each of
4 the complexes for each of the performance measures. So Mr.
5 Pratt knows the sum of those components exists. He knows what 02:56PM
6 they are. That's how he got to the sum. He added them
7 together. We would like to know the total number for each of
8 the ones, not just the ones that were the incidence but also
9 the total number of records that were reviewed.

10 MR. BOJANOWSKI: I see. I just want to make sure I'm 02:56PM
11 providing the Court the information it wants. You want it
12 broken down by performance measure, complex, and total number
13 of files reviewed?

14 THE COURT: Tell you what, when we finish here today
15 we will send an e-mail to you and to plaintiffs' counsel that 02:56PM
16 specifically identifies so we don't take more witness time.
17 Seems more efficient to do it that way.

18 MR. BOJANOWSKI: That's fine. I want to make sure I'm
19 getting to the Court the appropriate information.

20 THE COURT: So that the Court is an open court as 02:56PM
21 well, the public trial right is an important one, we'll also
22 cause the e-mail to be on the Court docket.

23 MR. BOJANOWSKI: That's fine, Your Honor.

24 THE COURT: Okay. Thank you. Thank you, sir.

25 BY MR. BOJANOWSKI: 02:57PM

1 Q. We had talked about the 17,000 files that were looked at,
2 but then you also mentioned these 420 files that you said you
3 had Vanessa Headstream look at. Do you remember that
4 testimony?

5 A. Yes.

02:57PM

6 Q. When did that review take place?

7 A. That review took place last week. That was subsequent to
8 the plaintiffs filing some information that said that our
9 information was incorrect.

10 Q. Is that why it was conducted?

02:57PM

11 A. Yes.

12 Q. Was that information that had been provided to you
13 previously by Corizon, or was that another source?

14 A. No. I didn't receive this from Corizon.

15 Q. Okay. And so how much time did Ms. Headstream take to
16 review that 420 files?

02:57PM

17 A. It was about 40 hours, as I recall.

18 Q. We have talked about an increase in the compliance, overall
19 compliance rate at all of the facilities. Do you know if the
20 compliance rate has increased even though the vacancy rate has
21 remained the same?

02:58PM

22 MS. KENDRICK: Objection. Assumes facts not in
23 evidence and also relevance. The overall compliance rate that
24 defendants keep talking about is not part of the stipulation
25 and not relevant to the Order to Show Cause.

02:58PM

1 THE COURT: It's a very troubling question. It is not
2 precise enough to be of any assistance or to be reasonably
3 assured of producing an answer that would be meaningful because
4 of the objection. So the objection is sustained.

5 BY MR. BOJANOWSKI:

02:59PM

6 Q. Do you know, has the vacancy rate changed at all during the
7 time period in which the incentives have been in place and
8 compliance has increased?

9 A. No.

10 MS. KENDRICK: Objection. Vague. He doesn't say
11 which vacancies, which positions, or what he's talking about.

02:59PM

12 THE COURT: Again, there's no overall vacancy rate.
13 As I understand it's been reported for different positions. So
14 the objection to that is sustained as well.

15 BY MR. BOJANOWSKI:

02:59PM

16 Q. Is there an overall staffing fill rate number that you are
17 aware of?

18 A. Yes. The overall staffing rate, vacancy rate, is
19 typically -- well, the fail rate is typically 88 to 90 percent.

20 THE COURT: Whose vacancy rate is this? Corizon's or
21 ADC's or both?

02:59PM

22 THE WITNESS: Corizon.

23 BY MR. BOJANOWSKI:

24 Q. When we talked about sanctions being imposed the last time
25 in direct exam and cross-exam, was that what we were talking

02:59PM

1 about was the overall vacancy rate?

2 A. Yes.

3 Q. So we have talked -- or you have presented some evidence to
4 the Court with regard to that rate and how it has changed or
5 not changed over a period of time. Do you recall that
6 testimony?

03:00PM

7 A. Yes.

8 Q. And that was part of the sanction letters that we had
9 talked about in your direct testimony. Do you remember that?

10 A. Yes.

03:00PM

11 Q. And so has the compliance rate increased even though that
12 vacancy rate has remained the same?

13 MS. KENDRICK: Objection, Your Honor. Relevance.

14 THE COURT: Overruled.

15 THE WITNESS: Yes. Again, the overall compliance has
16 gone up from sub 90 to over 94 percent.

03:00PM

17 THE COURT: But that doesn't really tell me very much
18 about the ones that are the subject of the OSC because you are
19 not linking up any staff that would be relevant to those
20 issues, the ones I'm looking at here now, with respect to the
21 number of people who are not there for those particular
22 performance measures.

03:00PM

23 THE WITNESS: Correct, Your Honor. The staffing -- no
24 additional staffing has been put directly to any of the OSC
25 performance measures that I'm aware of.

03:01PM

1 THE COURT: So I gather this overall vacancy rate
2 could include people who were moving trash at the end of the
3 day?

4 THE WITNESS: I'm sorry?

5 THE COURT: Could it be people, Corizon employees who
6 have not filled the positions that are not health care
7 providers, for example? Is this vacancy rate just health care
8 providers?

03:01PM

9 THE WITNESS: This vacancy rate is just health care
10 providers. I don't want to say just health care providers but
11 separate from their regional office this is licensed people,
12 this is people that provide the care.

03:01PM

13 THE COURT: So this vacancy rate is a licensed health
14 care provider only number? That's what you are focusing on?

15 THE WITNESS: No, sir. It's not restricted to that
16 but it includes all of them.

03:01PM

17 THE COURT: I see. So I'm just trying to understand
18 whether or not, was it Ms. Kendrick's objection, I think, is
19 one that is, again, as I listen to this conversation, I want to
20 be receptive to information that will help me make a better
21 decision. It seems that she's making an objection that it
22 can't really be possibly helpful for me because it's not
23 specific to the performance measures that I have focused on.
24 And it sounds to me like that's essentially right what she's
25 saying. Do you disagree?

03:02PM

03:02PM

1 THE WITNESS: I disagree.

2 THE COURT: Okay. Why?

3 THE WITNESS: Because I think the overall staffing
4 addresses every performance measure, not just the ones in the
5 OSC.

03:02PM

6 THE COURT: But again, why should I be focusing on the
7 94 that are now, you say, in compliance as opposed to the six
8 that remain my problem? Especially because the six that remain
9 my problem are very, what I have learned so far in this case,
10 is they are unique circumstances. It's sui generis for each
11 particular yard. That's why I focused on each yard and that's
12 why Mr. Millar is looking at particular areas, particular
13 staffing needs at that place because it really doesn't matter
14 if I have a problem -- or it doesn't really matter if I have a
15 problem in Safford what's going on in Phoenix.

03:03PM

03:03PM

16 THE WITNESS: Understood.

17 THE COURT: All right. Thank you.

18 BY MR. BOJANOWSKI:

19 Q. Do you recall the testimony that was given with regard to
20 what was called the root cause analysis?

03:03PM

21 A. Yes.

22 Q. And I don't really want to get too deeply into this, but
23 there, in my mind, seems to be some confusion with regard to
24 documents that were involved in that and what that constituted.

25 Do you know what documents are part of that root cause analysis

03:03PM

1 that we had talked about earlier?

2 A. The ones that I recall were the visios, and the ones that
3 didn't come out too well that were hard to read as part of that
4 root cause analysis.

5 Q. So when we were talking about the root cause analysis it
6 was the visios and the analysis of how those visios are used
7 for the Court's 11 measures to obtain the 100 percent
8 compliance?

03:04PM

9 A. To try to get the 100 percent compliance and the visios
10 were laid out the process to try and identify any of the fail
11 points laid out in that process.

03:04PM

12 Q. Have you and Mr. Ryan taken all actions that you believe
13 you can to prepare and verify the daily realtime reports that
14 were filed with the Court?

15 A. Yes. I think we have.

03:04PM

16 Q. Do you consider yourself and Director Ryan to be in civil
17 contempt of the Court's OSC order?

18 A. No.

19 Q. Why not?

20 A. Well, we do everything we can to hold Corizon accountable.
21 We have since the beginning. I have testified as to the
22 methods and the things that I do. I won't speak for the
23 director. I will speak for myself. He has testified on his
24 own as to our communications and our expectations and trying to
25 hold Corizon accountable for the performance measures. I think

03:05PM

03:05PM

1 the efforts that we have made in conjunction with removal of
2 caps has shown some positive results. So I like the direction
3 this is going. And it's not -- and we're not going to quit
4 holding them accountable at this point. We've got a lot of
5 work to do. That's obvious by some of the continued failures
6 that we have got.

03:06PM

7 But again, the goal is 100 percent compliance
8 regardless of the OSC. I mean, that's the goal. Is it
9 realistic? No, I don't believe it's a realistic goal. In real
10 life nobody is 100 percent at anything. But that's what we're
11 going to strive for and that's what we're going to continue to
12 push Corizon to do.

03:06PM

13 THE COURT: Mr. Pratt, I wonder, having listened to
14 your testimony and the director's testimony and having presided
15 in this case, if there is a certain barrier to the State here
16 achieving all reasonable methods to try to comply with the
17 items specified in the Order to Show Cause. And that is
18 because it occurs to me that because the State has chosen to
19 contract with an outside provider rather than having its own
20 responsibility for providing this care that you deal with the
21 marketplace reality, as we have heard, that there are at most
22 three possible entities out there who could do this kind of
23 work. And you are dealing with an entity now who has the
24 ability to walk from the contract with notice and leave you hi
25 and dry completely.

03:06PM

03:07PM

03:07PM

1 So that would seem to make me think that always in the
2 back of your head if we push too hard they will walk. And it
3 also made me think that's why the contract, over time, became
4 more lucrative for Corizon meaning they received more money by
5 the contract amendments and that they received money associated
6 with the carrot, that seemed to have, as I talked to Director
7 Ryan about, didn't seem to make economic sense to me. But then
8 I stepped back from it and I thought in my mind, well, maybe
9 there's a word out there that Corizon is saying, if you don't
10 make this worth our measure, meaning give us more money at the
11 same time you are insisting we do all these many things to meet
12 the stipulation because you are saying we have to do these
13 things, we will walk. So you are faced with a situation that
14 causes you to not push as hard as you might want to because of
15 that reality.

03:07PM

03:08PM

03:08PM

16 Is that a fair conclusion?

17 THE WITNESS: I understand the argument. It doesn't
18 prevent us from pushing. The budget realities are exactly what
19 they are. We were legislatively mandated to privatize. This
20 wasn't the Department of Corrections decision to do that. The
21 law was made. We have to follow the law.

03:08PM

22 The reality is that it's a small limited number of
23 players that can provide this amount of services on this level.
24 We don't have a lot of control over that, and the reality is
25 that any contractor with notice can walk. That would leave us

03:09PM

1 in an extremely vulnerable position. But on the other side of
2 that equation I have the taxpayers and the budget that I have
3 to adhere to. So there are limitations on my side as to what
4 we can do in addition to the demands that we're making.

5 THE COURT: And I appreciate that the Department can
6 only spend what the legislature has authorized it to spend.

03:09PM

7 And you referred to it as we have to follow the law. But there
8 is a fundamental law in the country. That is the constitution

9 and its amendments. And the case here, the law that I'm

10 applying, is one that comes from that foundational document.

03:10PM

11 And so if there are conflicts between the requirements of the

12 foundational document and the state law, and said in other

13 words, if the State isn't spending enough to get that kind of

14 contractor it needs to be able to do that job such that if that

15 contractor, if asked to do what is the requirements of the

03:10PM

16 stipulation, would then respond that's asking us to do too much

17 with the resources you have given us. If you ask us to do that

18 we will walk. And so if that causes you to back off from those

19 kinds of requirements, you are following the law of the State

20 of Arizona but you are potentially violating the Constitution

03:10PM

21 of the United States which is the supreme document that would

22 control in existence of a conflict between the two.

23 So I appreciate what you say. I just want you to also

24 understand that the dilemma that I have is that I cannot

25 respect the constitution if I allow the subordinate document,

03:11PM

1 the law of Arizona, the legislative action of the State of
2 Arizona to predominate. In our federal system that was not the
3 arrangement that was originally agreed to by the 13 states and
4 every state that came into the union such as Arizona did in
5 1912. Arizona agreed to be subject to the supremacy clause and
6 also to understand and embrace the idea that if there was a
7 conflict between the constitution of the United States and the
8 law or constitution of the State of Arizona, that there would
9 be the federal document that would control.

03:11PM

10 Go ahead, Mr. Bojanowski.

03:11PM

11 MR. BOJANOWSKI: May I have a moment, Your Honor?

12 Your Honor, may I have a moment?

13 THE COURT: Oh. Of course. Yes. I'm sorry. I gave
14 you an impermissible visual cue.

15 MR. BOJANOWSKI: I just wanted to make sure I wasn't
16 leaving the podium without you acknowledging.

03:12PM

17 THE COURT: The court reporter did not report that I
18 had waved you over to counsel table as you wished.

19 MR. BOJANOWSKI: Thank you, Your Honor.

20 THE COURT: Surely.

03:12PM

21 BY MR. BOJANOWSKI:

22 Q. Mr. Pratt, the Court has asked you some questions about
23 available contractors and such. Has that fact become an
24 impediment to you to actually push them to do what you need
25 them to do to get into compliance?

03:12PM

1 A. No. As I said, that's not stopping the demand process and
2 the requirements that you have laid out in the OSC.

3 THE COURT: Ask a harder question. That thought's
4 never entered your head?

5 THE WITNESS: Which thought? 03:13PM

6 THE COURT: If we push too hard on this Corizon will
7 walk?

8 THE WITNESS: No. That thought has entered my head.
9 Absolutely, Your Honor.

10 THE COURT: Okay. Thank you. 03:13PM

11 BY MR. BOJANOWSKI:

12 Q. Has that stopped you from making the demands?

13 A. No.

14 Q. And you are going to continue to make those demands?

15 A. Yes. If any vendor would choose to walk, we do have 03:13PM
16 insurance policies that back that up. But still, that would
17 ultimately leave the inmate population in a tremendous lurch.
18 And I don't want to see that.

19 Q. Have we been faced with a contractor in Arizona walking
20 from a contract before? 03:13PM

21 A. Yes, we have.

22 Q. And have we dealt with that to provide a continuity of
23 care?

24 A. Yes. The first contractor that was awarded the original
25 contract, Wexford, chose to leave after only nine months in the 03:14PM

1 contract. That's when we went through the contract in
2 practicable process through state procurement and we were able
3 to go back to the remaining two bidders on the original RFP to
4 ask them to resubmit a bid.

5 Q. And so although in the back of your mind there's that
6 possibility, there are, I call them, contingency plans in place
7 to address that scenario should it arise?

03:14PM

8 A. Yes. But that would be also potentially at the expense of
9 inmate health care.

10 MR. BOJANOWSKI: May I have another moment, Your
11 Honor?

03:14PM

12 THE COURT: You may.

13 MR. BOJANOWSKI: Thank you.

14 Nothing further, Your Honor.

15 THE COURT: One more question, Mr. Pratt. In your
16 dealings with Corizon over the time that they have been the
17 contractor, have they ever threatened you to walk?

03:15PM

18 THE WITNESS: No.

19 THE COURT: Thank you. Well, you are done, sir.

20 THE WITNESS: Thank you.

03:15PM

21 THE COURT: Thank you very much.

22 MS. KENDRICK: Your Honor.

23 THE COURT: Why do you think you should have some
24 recross?

25 MS. KENDRICK: Yes, sir, with the new exhibits.

03:15PM

1 THE COURT: That was a new exhibit?

2 MS. KENDRICK: Yes. Exhibit 105 was a new exhibit.

3 THE COURT: Fair enough. You may.

4 You are not quite done, Mr. Pratt. In fairness

5 something was presented to you that was not available to the
6 plaintiffs at a time -- well, at least it wasn't something that

03:15PM

7 the State had used. So now it's fair that the -- that

8 cross-examination should be reopened to that issue.

9 THE WITNESS: Okay.

10 MS. KENDRICK: I promise to try to be quick.

03:15PM

11 RE CROSS-EXAMINATION

12 BY MS. KENDRICK:

13 Q. Can you look at Exhibit 105?

14 A. Okay.

15 Q. And this is the e-mail that you sent to Mr. Ward on

03:16PM

16 November 5th about the daily reporting?

17 A. Yes.

18 Q. And do you see that about seven or eight lines down in the

19 paragraph there's a sentence that reads, "As a result, ADC

20 demands that Corizon bolster its current complement of monitors

03:16PM

21 to capture the information necessary to not only comply with

22 the order but to identify problem issues in areas immediately

23 for resolution"?

24 A. Yes.

25 Q. How many additional monitors did Corizon bring in?

03:16PM

1 A. I don't know the number on that. I know they did bring
2 additional staff to supplement this.

3 Q. So did you ever follow up with Mr. Ward about how many
4 monitors were being brought in?

5 A. At the time I know there were additional staff brought on,
6 but I don't know the number. I'm thinking two or three.

03:16PM

7 Q. Okay. And on the second page of Exhibit 105 is an e-mail
8 that you sent to Mr. Ward on November 3rd saying that you
9 didn't want to wait until Monday the 6th to receive a complete
10 response. Do you remember, was that because you were going --
11 there was going to be a status hearing that week? Maybe if you
12 look at Exhibit 106 that will remind you if there was going to
13 be a status hearing that week.

03:17PM

14 A. I was asking for as much information that they had
15 currently at that time, and I didn't care if it took them
16 through the weekend to continue working on that process.

03:17PM

17 Q. Right. So Exhibit 106 is also a new exhibit that your
18 attorneys have added. Could you turn to that?

19 A. Okay.

20 Q. On the top of the second page is an e-mail from you to Mr.
21 Ward again about the daily reporting.

03:18PM

22 A. Yes.

23 Q. And in the second paragraph you state the next status
24 hearing is Tuesday, November 7th, and so you go on to say that
25 a deadline of November 10th would not work. Does that refresh

03:18PM

1 your memory that perhaps there was a status hearing on November
2 7th?

3 A. Sure.

4 Q. Do you remember telling the Court at the November 7th
5 hearing that Corizon was incapable of realtime reporting?

03:18PM

6 A. Not specifically, no.

7 Q. Do you remember telling the Court at the December 20th
8 status hearing that Corizon was incapable of realtime
9 reporting?

10 A. No.

03:19PM

11 MR. BOJANOWSKI: Objection. Outside the scope.

12 THE COURT: Overruled.

13 BY MS. KENDRICK:

14 Q. Do you remember telling the Court at the January 18th, 2018
15 status hearing that Corizon was not capable of doing complete
16 realtime reporting?

03:19PM

17 MR. BOJANOWSKI: Same objection.

18 THE COURT: Overruled.

19 THE WITNESS: No.

20 BY MS. KENDRICK:

03:19PM

21 Q. And I believe Mr. Bojanowski had asked you about the carrot
22 and the stick and that the incentives are capped at 3.5
23 million, correct?

24 A. Correct.

25 MR. BOJANOWSKI: I thought her recross was limited

03:19PM

1 to --

2 THE COURT: Tell me how this is legitimate subject for
3 recross.

4 MS. KENDRICK: Because I need to clarify something
5 that he said on redirect because I don't think it's accurate,
6 Your Honor. 03:19PM

7 THE COURT: Is it just one question or how many?

8 MS. KENDRICK: It should be one question if he can
9 answer it.

10 THE COURT: Okay. 03:20PM

11 MR. BOJANOWSKI: Same objection.

12 THE COURT: Overruled.

13 BY MS. KENDRICK:

14 Q. So you testified that the stick remained, that the cap, the
15 fines would keep going even when the incentives ran out. 03:20PM

16 Correct?

17 A. Correct.

18 Q. But that's only until June 30th, correct?

19 A. That's the end of the contract.

20 Q. So it doesn't go on indefinitely. It goes on for three
21 more months, correct? 03:20PM

22 A. In this contract, yes.

23 MS. KENDRICK: Okay. Thank you.

24 THE COURT: All right. Thank you, sir. You are now
25 indeed done. 03:20PM

1 MR. BOJANOWSKI: Your Honor, could I ask --

2 THE COURT: Your own lawyer is wanting to get back
3 into this. I'm trying to let you go but he's holding you. Go
4 ahead Mr. Bojanowski.

5 MR. BOJANOWSKI: Could I have a moment to confer
6 before I ask this question?

03:20PM

7 THE COURT: You can have a moment then you will tell
8 me why it is you get to have re-re-redirect.

9 MR. BOJANOWSKI: Your Honor.

10 THE COURT: Yes.

03:21PM

11 MR. BOJANOWSKI: I have been convinced not to ask any
12 questions.

13 THE COURT: Finally, sir. Thank you kindly.

14 THE WITNESS: I'm going to go now.

15 THE COURT: Yes. I would run.

03:21PM

16 THE WITNESS: Thank you.

17 THE COURT: Your next witness, please.

18 MS. LOVE: Your Honor, defendants are finished with

19 their witnesses. We would like to note for the record that

20 based upon testimony of Division Director Carson McWilliams

03:21PM

21 regarding his understanding of the stipulation that

22 contemplated at least four years to achieve full compliance and

23 the Court's questions regarding the same, defendants note for

24 the record that the stipulation that was filed at Docket 1185

25 on October 14th, 2014, which was signed by the parties --

03:21PM

1 THE COURT: Right. I'm aware of the paragraph that
2 refers to -- I'm very much aware of that. Also, the point is
3 that no one in this courtroom, I think, has ever said the words
4 to me that think that they have a four-year time to be able to
5 effect the stipulation, and that we have worked on a basis that 03:22PM
6 was identified from the very start when the failure to meet the
7 benchmark that was then in place caused the Court to engage in
8 remedial measures. And never once did anybody say we shouldn't
9 be doing this now. We could wait four years. And that's what
10 I thought I heard him say and I wanted to clear that up. 03:22PM

11 Now what the language means in the stipulation with
12 respect to the four years is it says it's a limitation on the
13 ability of anybody to move for the closure of the stipulation
14 and it does include the preamble that says -- I can't remember
15 it off the top of my head -- essentially words to allow for the 03:22PM
16 remedial measures to be effective or to take effect.

17 In any event, that general language is ambiguous
18 enough that it is completely overlapped by the previous
19 language in the stipulation, which I think I can't again -- if
20 I could pull it up immediately I would read it to you, which I 03:22PM
21 think is in the first or second operative paragraph of the
22 stipulation. I may be off by a couple paragraphs there where
23 it essentially includes the promise to meet all of those
24 stipulations with no reservation about time at all.

25 So to the extent that there was anybody who thought on 03:23PM

1 the yard, or anybody who, outside in the community, who
2 believed that there was a four-year time period to accomplish
3 the stipulation, the fact that I have never heard you, Mr.
4 Struck, or Mr. Bojanowski -- and maybe you can find it in a
5 transcript where you said it to me -- but it has certainly not
6 been a refrain that has commonly been presented to me. I don't
7 remember any of the lawyers saying, Judge, we don't need to be
8 all over this because we have four years. Instead what I hear
9 every single month is we are going to fix this next month by
10 doing the exact same thing rather than saying I've got four
11 years.

03:23PM

03:23PM

12 So I just wanted to make it very clear that this
13 judge, who was present in the settlement discussions and can
14 read the stipulation and has been present in the courtroom as
15 lawyers have been operating with their knowledge of what this
16 stipulation requires this suddenly hatched idea that appeared
17 someplace in the last month for the first time I had ever seen
18 it about four years is not something that I think is an
19 operative in this stipulation.

03:24PM

20 So you are making a record which now is the first time
21 that I have never heard that's something that has ever been
22 argued to me and I completely reject it.

03:24PM

23 MS. LOVE: Your Honor, we understand that you reject
24 it. For the record, defendants request permission to read in
25 Paragraph 37.

03:24PM

1 THE COURT: Unnecessary. Overruled. It's in the
2 stipulation. I know what it says. And to the extent that it
3 is needed to be added to the record, Ms. Love, it's in the
4 record already. Isn't it?

5 MS. LOVE: Yes.

03:24PM

6 THE COURT: Anything else we need to address?

7 MR. BOJANOWSKI: Your Honor, could I move for the
8 admission of Exhibits 105 and 106 that were testified to?

9 THE COURT: Any objection.

10 MS. KENDRICK: No, sir.

03:24PM

11 THE COURT: 105 and 106 will be received.

12 MR. BOJANOWSKI: Thank you, Your Honor.

13 THE COURT: Thank you. So are we ready to proceed to
14 argument?

15 MS. KENDRICK: Yes. Plaintiffs are ready.

03:24PM

16 THE COURT: No more witnesses, right, from the
17 defendants? And the defendants have the burden, so they go
18 first.

19 MR. STRUCK: Yes. And, Your Honor, we request that
20 there be Findings of Fact and Conclusions of Law submitted.

03:25PM

21 THE COURT: I don't need that. I need you to make
22 argument and I will issue an order based upon the argument. I
23 am not going to wait any longer for you to prepare Findings of
24 Fact and Conclusions of Law. When I issue my order it will
25 include Findings of Fact and Conclusions of Law. But if you

03:25PM

1 are asking permission to submit proposed Findings of Fact, I'm
2 not going to allow that.

3 MR. STRUCK: Thank you, Your Honor. I will proceed.

4 THE COURT: Okay.

5 MR. STRUCK: Your Honor, the plaintiffs presented two
6 witnesses with respect to whether or not the defendants were in
7 civil contempt. Neither of those witnesses provided any
8 evidence with respect to the Department, that being Director
9 Ryan and Mr. Pratt, not taking all reasonable steps to comply
10 with the Court's October 10th, 2017 order.

03:25PM

03:26PM

11 THE COURT: And that's a curious first argument to
12 hear from the State, because the plaintiffs could remain silent
13 because you have the burden. And so it could be that they have
14 concluded, but they didn't conclude that, they put on evidence.
15 But they could have concluded that the record already would
16 demonstrate that there was a failure to show that all
17 reasonable steps were taken. You have to show that. That's
18 your burden.

03:26PM

19 So starting off with the argument that the plaintiffs
20 didn't present their own evidence is not one that I find
21 particularly compelling, because again, they could have said
22 nothing. And if they believed, and if the record would
23 support, you could still end up in the situation of not being
24 able to meet your burden. So I guess I would like to hear
25 about what you think that you presented that demonstrated that

03:26PM

03:27PM

1 you did not take all reasonable steps.

2 MR. STRUCK: Certainly, Your Honor. I believe the
3 evidence demonstrated, and not just in this Order to Show Cause
4 hearing but throughout the pendency of whether it be a status
5 conference or other evidentiary hearings that have occurred 03:27PM
6 over the past two and a half, three years, that the defendants
7 are taking steps and continue to take steps on a daily basis
8 with respect to ensuring that the contractor, the third party
9 contractor, Corizon, who is not a party to the lawsuit, I
10 understand the Court has -- I understand that it is a 03:27PM
11 non-delegable duty. The defendants understand that which is
12 why they do take the steps that they take, whether that be
13 meeting on a daily basis with respect to how health care is
14 provided to the 34,000 inmates underneath the auspices of this
15 particular order. And the director has testified that there 03:28PM
16 isn't a day that goes by that he doesn't address and deal with
17 issues, the myriad of issues that pop up with respect to the
18 Parsons order.

19 And it's not just the 11 performance measures that
20 we're talking about here, it's all aspects of health care. 03:28PM
21 Because as the Court has stated on numerous occasions, and the
22 defendants don't disagree, it's the provision of health care to
23 the entire class under the stipulation that is important, not
24 simply looking at 11 performance measures at these particular
25 facilities that have failed over the course of the pendency of 03:28PM

1 the stipulation.

2 The Department, through the director and Richard Pratt
3 and his team, have pushed Corizon to comply with those
4 particular performance measures at those facilities. And if
5 the Court will review the -- track the performance of those
6 performance measures, they have continuously gone up over the
7 last several months.

03:29PM

8 THE COURT: You can't say that across all of them.

9 MR. STRUCK: Well, I think that they have gone up,
10 Your Honor. If you look at -- if you track it over, say, the
11 last year, at those particular facilities, they have gone up
12 considerably.

03:29PM

13 THE COURT: Well, but you are saying continuously.
14 That would suggest I always had a positive slope. I didn't
15 always have that.

03:29PM

16 MR. STRUCK: In terms of where they began when this
17 process began with respect to the Court determining that --

18 THE COURT: I mean, it's one thing to say that
19 everything has been going along, and everything every day we're
20 marching on these and we're getting better every single day,
21 that's not true because we have had cliffs that we have fallen
22 off and dropped down again on the way. You may say we resumed
23 the march, but it would be a very different thing to say we
24 have never had anything but a positive improvement along the
25 entire course. We just haven't seen that.

03:29PM

03:30PM

1 MR. STRUCK: What I'm trying to say, Your Honor, since
2 these first got on our radar screen and your radar screen, they
3 have gone up. Now, have they gone up incrementally every
4 month? No, they haven't. And I apologize if --

5 THE COURT: That's how I took the word "continuously"
6 but I now understand what your position is.

03:30PM

7 MR. STRUCK: The director takes very seriously the
8 provision of health care within the Department of Corrections.
9 He takes very seriously the provision of health care to every
10 single inmate that's in his charge. And he has done everything
11 he can to get Corizon to act, whether that be bringing in extra
12 people to get these performance measures in compliance, pushing
13 them on a continual basis, having direct communications with
14 the Corizon CEO on a weekly basis, sometimes more than a weekly
15 basis with respect to these performance measures at these
16 facilities.

03:30PM

03:31PM

17 And Corizon makes promises, and they have been able to
18 improve it, but there, again, there have been some performance
19 measures in the last few months among those 11 that have not
20 met the 85 percent threshold. But they are close.

03:31PM

21 With respect to the Court's order that the defendants
22 must -- that these performance measures have to be 100 percent
23 compliant, that is simply, at least under the defendants'
24 belief, not something that's possible. We understand that the
25 Court may not require 100 percent compliance but it is simply a

03:32PM

1 monumental task not only to reach 100 percent compliance but
2 for Corizon to even determine who it is that isn't under
3 compliance. It was -- the Department has set up -- the
4 Monitoring Bureau has set up --

5 THE COURT: Why did you enter into a contract that
6 required that?

03:32PM

7 MR. STRUCK: 100 percent compliance.

8 THE COURT: You obviously now how to make a percentage
9 benchmark because you employed that in the contract that you
10 entered into. But you didn't create a carveout saying we never
11 have to do more than 90 percent. We never have to do more than
12 95. You promised to meet the performance measure with respect
13 to every inmate and every performance measure.

03:32PM

14 MR. STRUCK: The manner in which the monitoring was
15 set up was on a -- they would take a sample size and come up
16 with whether or not Corizon has met, whether it be 75 percent,
17 80, or 85 percent performance.

03:32PM

18 THE COURT: Right. But that's not a test with whether
19 or not you are in compliance with the stipulation. That's the
20 measure that invokes my enforcement role.

03:33PM

21 MR. STRUCK: Defendants take the position that that
22 monitoring which is set up in the stipulation is what the
23 benchmark needs to be for the Court to determine whether or not
24 the defendants are in noncompliance.

25 THE COURT: Right. And I don't read the stipulation

03:33PM

1 that way because none of that language that exists in the
2 stipulation, perhaps the Ninth Circuit will elucidate in its
3 pending matters under review about whether or not my view --
4 and again, we probably don't need to go into it again because I
5 know you have a different view. And I have a view that is 03:33PM
6 controlling in this case until the Ninth Circuit tells me
7 otherwise, and that is the benchmark of compliance level is not
8 whether you are meeting compliance of the stipulation. It's
9 whether or not you invoke my enforcement powers.

10 And I stay away from everything where you don't fail 03:34PM
11 to meet presently at 85 percent. If you are above 85 percent I
12 have no business in that performance measure. But if you get
13 below 85 percent then I do have business there and I am
14 concerned about what is the promise of the stipulation and that
15 is every single inmate will receive the benefit of the 03:34PM
16 stipulation. Because there's no qualification as I read it in
17 the stipulation that says we only have to do it for 85 percent
18 of the inmates.

19 MR. STRUCK: With respect to the Order to Show Cause
20 order that came out on October 10th, the defendants presented 03:34PM
21 evidence with respect to what steps the director and Richard
22 Pratt took with Corizon to get them to comply with the Court's
23 order and to get them to exceed the 85 percent and actually
24 demanded 100 percent compliance as the Court did. The
25 defendants have taken great -- made great effort to try and get 03:35PM

1 Corizon to comply with these performance measures at these
2 facilities. There are constraints that the defendants have
3 with respect to how this can be accomplished, and the director
4 and Richard Pratt worked within the constraints that they had
5 in order to attempt to get the third party health care provider
6 to comply with the Court's October 10th, 2017 order.

03:35PM

7 THE COURT: Do you want to illustrate what those
8 constraints are?

9 MR. STRUCK: Well, there's -- they have a third party
10 health care provider. That's one of the constraints. They
11 aren't self-operating. And the director testified that they
12 haven't been self-operating since he came on board in 2009.
13 They self-operated for a period of three years until Wexford
14 was awarded the RFP.

03:35PM

15 THE COURT: Why is that a limitation that I should
16 recognize? If the State undertook an obligation to perform
17 something and they went out and hired somebody else to satisfy
18 that obligation and that somebody else wasn't able to meet the
19 requirements of the obligation, why should I say the State gets
20 a pass because this third party wasn't able to accomplish the
21 task when fundamentally, it was the responsibility of the State
22 to serve that purpose, to provide that service. And upon its
23 failure why should I say that they get a pass because they
24 turned it over to somebody else who hasn't done that?

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25 MR. STRUCK: Because the Order to Show Cause came out

03:36PM

1 on October 10th, 2017. And the Order required 100 percent
2 compliance as of beginning December 1st of 2017.

3 THE COURT: Let's keep in mind that you had notice
4 about this in the summer of 2017. So this wasn't a big
5 surprise. In fact, it was the plaintiffs who said that I
6 needed to back off and give you more time. So you got this
7 extra time.

03:37PM

8 So the idea that you would have been sort of rushed or
9 surprised by what came in the Order to Show Cause order in
10 October when in July of 2017 you had been fully informed about
11 the Court's intention.

03:37PM

12 MR. STRUCK: I'm trying to respond to the Court's
13 question.

14 THE COURT: I just wondered about limitation. So the
15 first limitation is they have a third party contractor. And I
16 said why should that mean the State should get a pass? That's
17 the answer I'm interested in right now.

03:37PM

18 MR. STRUCK: And the answer is even if you go back to
19 June when you indicated that you were going down the road of
20 contempt sanctions if these performance measures aren't met,
21 there is simply nothing that the director can do with respect
22 to getting rid of a third party health care provider and
23 self-operating.

03:37PM

24 THE COURT: Wait. Wait a minute. Why couldn't the
25 State say you are not meeting the function. You need to meet

03:38PM

1 the function. And then in the reality of the situation, in my
2 question for Mr. Pratt reveals is that I do appreciate that
3 there are certain limitations with a contractor who can walk
4 and the State doesn't want that contractor to walk. So
5 consequently when the State comes to that third party
6 contractor there are things you can do. And I guess I'd like
7 to hear why it is that these things that are in my mind as
8 possible things to do aren't realistic or reasonable.

03:38PM

9 The first is, you could say, well, if you thinking
10 about walking or if we're fearful you are going to walk, we're
11 going to give you more money to be able to perform the service.
12 So that's something the State could do. If they are not
13 amenable to taking more money, for whatever reason, or that's
14 unworkable, and you have a particular performance measure that
15 says you are not meeting this need, the State can jump in and
16 assume that responsibility and make it happen. Because
17 ultimately it has the responsibility.

03:38PM

03:38PM

18 So if you take as an illustration of performance
19 measure that requires that a provider review a medical -- a
20 medical lab report with the inmate in a certain number of days
21 and Corizon doesn't have the staff to do it, the State simply
22 says we will hire somebody and put them in the place in the
23 office in our prison to make sure that that happens. Why is
24 that not possible?

03:39PM

25 MR. STRUCK: There are two. And I will address the

03:39PM

1 first one. The first one is why doesn't the State pay Corizon
2 more money to hire more staff. The testimony has been, and the
3 Court is aware, that Corizon hasn't been able to fill the full
4 time equivalent positions that they were awarded under the
5 contract.

03:39PM

6 THE COURT: That's for the ones that are affected with
7 staff people of medical providers. Those are not the sole
8 limitation of the subject of the OSC. But the idea that
9 perhaps there is some problem with respect to Corizon, Corizon
10 has a big incentive not to pay these people extra money whereas
11 the State has an incentive to avoid the peril of failing to
12 meet the stipulation requirements by making sure those people
13 are in place. Corizon doesn't have the same incentive. The
14 State does. This is the State's obligation. So why couldn't
15 the State do that?

03:40PM

03:40PM

16 MR. STRUCK: Well, they worked with Corizon to try and
17 get Corizon the fill those FTEs.

18 THE COURT: By sending letters, some number of letters
19 Corizon comes back with rather snippy responses to its
20 employer, its contracting officer in this one letter that is
21 now in evidence in the case. So I guess there are reasons to
22 suspect that the State's desire to rely upon Corizon's
23 representations are sometimes not valid.

03:40PM

24 MR. STRUCK: The evidence that was presented at this
25 hearing is that Corizon actually pays higher than the going

03:40PM

1 rate for health care providers.

2 THE COURT: Maybe it's not enough. You said going
3 rate for where? Mr. Millar is going to talk to us about that.
4 We have an expert who is going to tell us whether or not we're
5 at the place you need to be paying to get the right number of 03:41PM
6 people. Testimony is indeed true there has been a person here
7 who testified that Corizon pays more than the State pays.
8 Well, there's no limitation on the State deciding what to pay
9 that it can't fix.

10 MR. STRUCK: Well, there's a limitation with respect 03:41PM
11 to the current budget.

12 THE COURT: The State can fix that. They can allocate
13 more money.

14 MR. STRUCK: Between June and --

15 THE COURT: There are these things called special 03:41PM
16 sessions. I grew up in Arizona. I know about them. The
17 governor can call the legislature at any time.

18 MR. STRUCK: Well, what the defendant did was work
19 with Corizon with respect to getting Corizon to hire more
20 staff. The problem appeared to be with respect to turnover of 03:41PM
21 the Corizon staff not necessarily being able to hire them, and
22 so that is something that the State, the defendants continue to
23 work with Corizon to --

24 THE COURT: I would like to be able to count, Mr.
25 Struck, sorry to interrupt, but the number of times, we can go 03:42PM

1 back to the transcripts, where I said it was a staffing issue
2 you said no, it's not. It's not. It's not.

3 MR. STRUCK: I think, Your Honor, if I may, when I
4 said it's not, I said not in terms of number of staff. Because
5 there are two issues with respect to staff. And that is, is 03:42PM
6 the staffing pattern sufficient with respect to the health care
7 providers that have been budgeted under the contract, that's
8 the first issue. The second issue is whether or not it's
9 sufficient if those positions have been full. And they haven't
10 been full over the life of the contract and it's defendants' 03:42PM
11 position that they believe that these performance measures
12 would be met if Corizon was at 100 percent in terms of staffing
13 those FTEs and was working with decreasing their turnover with
14 respect to every time you lose a staff member you have to bring
15 somebody in and train them. And there's been testimony about 03:43PM
16 that. The Court's well aware of it. And the defendants have
17 been working with Corizon to do that.

18 And simply -- the argument that simply throwing more
19 money at Corizon will somehow solve the -- or solve the 11
20 performance measures that have fallen short, is simply 03:43PM
21 speculation. And what the defendants have done is try to get
22 Corizon to fill those positions to see if it would make a
23 difference. And throwing more money at them for positions that
24 they can't fill doesn't necessarily mean that --

25 THE COURT: I guess if you are not filling the 03:44PM

1 positions because you are not paying enough, then it would be a
2 good thing to throw more money at this for the purpose of
3 paying these people more. Again, I'm completely embraced with
4 the idea of what happens in a market-driven economy such as
5 ours where if you have a lower supply you simply increase the 03:44PM
6 attraction to people who want to be in that position that you
7 are offering for them. And the way you do that is you offer
8 more money. That's what everybody knows. And it's not a
9 completely errant supposition that led me to believe -- I
10 needed to make sure it wasn't errant but again, what I have 03:44PM
11 learned about my beloved country is that we have this common
12 understanding that this is what drives us. It's a market-based
13 economy. So the economics that I learned in college and
14 learned later on in life from real practical experience was it
15 wasn't exactly true. Sometimes it is throwing money at people 03:45PM
16 whom you attract to do a job in a place where maybe they don't
17 want to do that job in the current rates they are being
18 offered.

19 So if you increase the pay you will find a couple of
20 things that I think will either be proved right or wrong by Mr. 03:45PM
21 Millar, and that is, if you offer more money you will get a
22 lower turnover rate and you will be able to fill the positions
23 that are empty. And I guess I would be surprised to see if any
24 reasonable person could say that logic wasn't right.

25 MR. STRUCK: I suppose if you pay a nurse an 03:45PM

1 exorbitant amount of money you might get --

2 THE COURT: I wasn't interested in paying an
3 exorbitant amount of money. I was interested in paying the
4 amount of money that was necessary to accomplish the task and
5 that is to make sure we had sufficient number of people with
6 the right qualifications to do the job. And I don't think that
7 was necessarily something I ever entertained would be
8 exorbitant. It was simply what was necessary. I'm not
9 interested in asking anybody to spend exorbitant amounts. I'm
10 interested in people spending what's necessary.

03:45PM

03:46PM

11 MR. STRUCK: Well, there's been testimony in this case
12 that, for example, at the Yuma facility they offered \$400,000
13 for a psychiatrist position and they couldn't even get anyone
14 applying for that position.

15 THE COURT: If they have to have a psychiatrist
16 position in Yuma and no psychiatrist wants to do it for 400,000
17 the next step is to figure out what can we do to get people to
18 be interested in being in Yuma and to be a psychiatrist if we
19 find we need to have one. It may mean that you pay 425. It
20 may mean that you pay 450. Again, in this market-based economy
21 that's what drives us in our decision making. That's what we
22 do.

03:46PM

03:46PM

23 So consequently your suggestion that the analysis is
24 closed by the reality that what sounds to me like a salary that
25 is twice my salary by much more would cause me to want to go to

03:47PM

1 school to maybe become a psychiatrist at some point. But that
2 being said, maybe the market is so difficult, so provider
3 favored that you do have to do that in certain circumstances
4 because the State has an obligation to provide psychological
5 psychiatric care to its inmates. So you have to get it one way 03:47PM
6 or the other. If you are going to decide to incarcerate people
7 in Yuma, you are going to have to pay what it takes in a way
8 that complies with the law.

9 MR. STRUCK: The point I was trying to make was they
10 were working with Corizon to increase the amount of money that 03:47PM
11 was being offered to fill these positions. And Corizon was
12 doing that and they did increase and they didn't -- weren't
13 always successful at filling those positions.

14 And in terms of the confines I was talking about, the
15 budgetary confines and the fact there's a third party health 03:47PM
16 administrator, I think the second example the Court gave was
17 well, why didn't the State go out and hire their own health
18 care staff, they are precluded from doing that by state
19 statute. They can't go out and hire health care staff.

20 THE COURT: Again, if that's the impediment that can 03:48PM
21 be fixed.

22 MR. STRUCK: Well, those are what's tying the hands of
23 Director Ryan when you issue your order on October 10th, 2017
24 to come into compliance, 100 percent compliance by December 1st
25 of 2017. He simply is -- to suggest that he can go out and 03:48PM

1 have -- and hope the legislature will change the legislation to
2 allow the State to appropriate him more money and allow the
3 State to hire their own folks to meet these certain performance
4 measures at 100 percent is not a reasonable measure.

5 THE COURT: Well, seems pretty reasonable to me 03:49PM
6 because on the calculus that I envision is the State failing to
7 meet the performance measures over such an intractable period
8 of time is told by the federal court that you are facing a risk
9 of significant financial penalties for failing to do this. And
10 so the financial issue would seem to be one that presents the 03:49PM
11 following choices: You can pay to provide the medical care
12 that you are obligated to provide to your staff at certain
13 number of dollars, or you can pay a penalty that will not solve
14 the problem directly as it would otherwise if you were hiring
15 somebody to do the job. 03:49PM

16 So that's something that is reasonable for the State
17 to consider and to me doesn't sound like handcuffs. It sounds
18 like part of intelligent decision making about what are the
19 choices we have and what's the best choices to make with the
20 fiscal fisc of the State of Arizona. Do we continue to be in a 03:50PM
21 situation where some law exists that limits us from being able
22 to provide the services that we're supposed to provide, or does
23 that handcuff that we have the key to, that we choose not to
24 open, compel the Court to impose sanctions that could be many
25 millions of dollars that don't accomplish the goal? 03:50PM

1 MR. STRUCK: Well, in terms of efforts that were made,
2 I think that the Court heard evidence from Director Ryan and
3 Richard Pratt as to everything they did to try and accomplish
4 this, including also with respect to Performance Measure 35,
5 Carson McWilliams testified with respect to how things were
6 changed to try and track and get that performance measure met
7 in terms of the transportation of inmates from one facility to
8 another. There has been no evidence that -- nor was there any
9 effort for the legislature to come in and appropriate more
10 money.

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03:51PM

11 THE COURT: I'm sorry. I didn't hear what you just
12 said.

13 MR. STRUCK: I said the legislature did not come in
14 and appropriate more money between October 10th and December
15 1st. That is true.

03:51PM

16 THE COURT: It could have asked the legislature to do
17 that. The legislature was in session.

18 MR. STRUCK: And the defendants did not threaten
19 Corizon or force them to quit and try and take over as
20 self-operating because then those performance measures would
21 certainly not have been met doing something like that. As the
22 director testified, they at this point in time, he couldn't get
23 enough money to be self-operating at this point.

03:51PM

24 THE COURT: And that's a choice that the State of
25 Arizona makes and the State of Arizona would have to come up

03:51PM

1 with the money if it failed to comply with its constitutional
2 obligations and if it failed to comply with the obligations
3 under the stipulation.

4 So there is the idea that exists in the world that the
5 State has to deal straight up with the fact that this
6 obligation in the stipulation and the constitutional
7 obligations to its inmates it has in custody will not be one
8 that you can pretend that you are able to make a decision on
9 the amount of money that you are going to allocate to the
10 problem if it turns out that amount of money is not sufficient
11 you cannot hide behind saying that's all we could do. The
12 State has other means available to it to try to be able to
13 amass the money that's necessary to do to meet its obligations.

14 This obligation is one that is significant. The
15 director testified that there has been a placeholder placed of
16 \$30 million with respect to health care for the next budget.
17 That would seem to make sense to the Court as to an appropriate
18 response to trying to decide how best to deal with the
19 circumstances of the State's obligations.

20 MR. STRUCK: And that budget has increased every year
21 with respect to health care.

22 In terms of something the Court said with respect to
23 the their constitutional obligation to provide health care,
24 defendants agree that they have a constitutional obligation to
25 provide health care. But what the defendants don't agree is

1 that not meeting these performance measures, these 11
2 performance measures at these facilities is a violation of the
3 constitution. It's a violation of the stipulation.

4 THE COURT: Just so you know, I wasn't giving you the
5 constitutional statement that I was making was to accompany the 03:53PM
6 obligation under the stipulation. I think there are two. You
7 are not -- it's not a surprise to you that I preside in a
8 number of cases in which the State is facing liability because
9 of constitutional deprivations wholly apart from the
10 stipulation and I am personally aware of substantial 03:53PM
11 settlements that the State has paid for cases where it deemed
12 that it did not want to go before a trier of fact before a jury
13 here and instead would pay significant dollars to try to settle
14 the case in advance. Those numbers add up.

15 And so my sense is that the State needs to understand 03:54PM
16 that it's really facing two threats to its fiscal fisc with
17 respect to failing to provide for the inmates in its custody.
18 On the one hand, there is the exposure that comes from the
19 stipulation, failure to meet those requirements; on the other
20 hand, there is the overriding that will last long and forever 03:54PM
21 beyond the stipulation, I hope. I hope the stipulation has an
22 ending at some point. But the constitutional obligation will
23 always be there and it simply is a circumstance that those
24 cases can be very expensive for the State. And I think that I
25 don't prejudge them, but in some number of these cases don't 03:54PM

1 produce any kind of a result that's favorable to the plaintiff
2 and adverse to the State. But a significant number do. And
3 that's just something that needs to be understood by not only
4 the executive but also the 90 people at the two houses.

5 MR. STRUCK: And we certainly understand that, Your
6 Honor. One thing that is with respect to this particular
7 contract, it does provide -- Corizon does indemnify the State
8 with respect to those kinds of claims that you are talking
9 about. So if the claim -- somebody sues the State of Arizona
10 or Director Ryan with respect to improper or constitutionally
11 deficient health care and it occurred while Corizon was
12 providing the health care then Corizon and its insurance
13 carrier step in and defend and make the decision with respect
14 to whether or not that case goes to trial or settles.

15 THE COURT: I see.

16 MR. STRUCK: But with respect to what the Court is
17 saying, yes, the, you know, can the Court issue sanctions
18 against the State of Arizona? It absolutely can. But did
19 Director Ryan and Richard Pratt take all reasonable measures in
20 order to comply with the October 10th, 2017 order? They did.
21 That's the defendants' position, that they took this very
22 seriously. You saw the letters. You heard the testimony of
23 Director Ryan. He's a very serious man and he's been doing
24 this for a long time and he cares about doing a good job. And
25 nothing distresses him more than the fact that he has a health

1 care provider that's not meeting these performance measures
2 under the contract and the stipulation. And he works on that
3 every day to try and get them to comply. I'm sure that's what
4 he's doing right now.

5 In any event, I think that the record is very clear 03:56PM
6 with respect to what the Department did, what the director did,
7 what he had people do in order to get compliance with the
8 order.

9 THE COURT: Thank you, sir.

10 Plaintiffs. 03:57PM

11 MS. KENDRICK: Thank you, Your Honor.

12 As the Court correctly observed, defendants have the
13 burden of proof to show that they took all reasonable steps to
14 comply with the order. And defendants have failed completely
15 in making their showing of proof. The Ninth Circuit has 03:57PM
16 spelled out exactly what is required to show all reasonable
17 steps.

18 First of all, contempt need not be willful, and
19 there's no good faith exception to contempt. So while Mr.
20 Struck argues that Director Ryan, quote, takes very seriously 03:57PM
21 the Court's order and is distressed by these violations of the
22 constitution and the Court's order, the bottom line is the
23 Ninth Circuit case law is clear that this good faith attempt is
24 not enough to invalidate a contempt order.

25 Second, the Ninth Circuit requires that the parties 03:58PM

1 show categorically and in detail all steps that they took.
2 What we got from evidence from these two defendants is they
3 wrote letters and had meetings. But what they specifically
4 requested Corizon to do was only two things: They asked
5 Corizon to fly in more health care staff, and they asked
6 Corizon to do realtime monitoring. And what we learned in the
7 testimony is that neither of those things appear to have been
8 done.

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9 Mr. Pratt could not speak to what types, how many, or
10 when health care staff, if any, were brought in. He could not
11 testify to how many additional monitors could come in.
12 Defendants have admitted that they and their contractor are not
13 capable of doing the realtime reporting. So those are the only
14 two specific steps that defendants direct Corizon to do and
15 none of them worked.

16 Finally, the third component of the burden of proof
17 under the Ninth Circuit case law is impossibility is not a
18 defense if the party itself is responsible for the ability to
19 comply. And defendants can't escape contempt here by saying
20 their hands are tied when they used their own rope to tie their
21 hands. The State did it to itself. The State passed a law
22 saying ADC had to privatize health care. The state passed a
23 law limiting the amount of money that ADC can pay outside
24 specialists for outside specialty medical care.

25 And finally, they can't argue they are not liable

1 because of the contract with Corizon or use the contract's
2 limitations as some sort of defense for contempt. They
3 voluntarily signed and entered into that contract in those
4 terms. So again, their hands are tied but they tied the rope
5 themselves.

04:00PM

6 Specifically going back to the reasonable steps, Mr.
7 Pratt testified that it was a pure guess that a dozen nurses
8 were flown in after he sent that letter asking Corizon to send
9 people in, but he took no notes and in no way tracked what
10 staff were brought in from out of state. Director Ryan said he
11 didn't keep track of these things and he deferred it all to Mr.
12 Pratt. Mr. Pratt also testified at one point that the sanction
13 letters he sends to defendants are, quote, boilerplate that I
14 have to fill in each month. And again, we don't think that
15 shows reasonable efforts were being made.

04:00PM

04:00PM

16 And defendants have failed to meet the requirement
17 that they show, quote, categorically and in detail why they are
18 unable to comply. They have testified about these root cause
19 analysis process flows that they called the visio charts. But
20 as was noted last month when they testified, these do not break
21 down by institution and show, for example, why there is more
22 compliance with one performance measure in the contempt order
23 at one institution versus another. It just shows what the
24 process is supposed to be.

04:00PM

25 So at most they could point to a flow chart that

04:01PM

1 showed the process but they didn't explain what was going wrong
2 at each prison, nor did they explain for each performance
3 measure at each institution all the causes of noncompliance in
4 December and January and what steps they took.

5 For example, Performance Measure 11 and 35 are both 04:01PM
6 performance measures that have to do with pharmaceuticals. And
7 there's an obvious step that the Department could have done to
8 help with delivery of medication and the transfer of
9 medication, and that is to keep a greater supply of medications
10 on site at the institutions as clinical stock. But none of 04:01PM
11 their witnesses testified that they ever asked Corizon to do
12 that, and none of the letters that they showed us ever asked
13 that they did it. Furthermore, to the extent they even asked
14 Corizon to do something, it's not clear how it would go to
15 specific performance measures. So, for example, flying in more 04:02PM
16 medical providers might help in terms of timeliness of
17 referrals to see a doctor, but it's unclear how that would
18 affect Performance Measure 11 which is how long it takes from
19 the medication to get from Oklahoma to Arizona.

20 Mr. Struck also said that the legislature didn't 04:02PM
21 appropriate money between October 10th and December 1st. But
22 notably Director Ryan testified that he did not ask the
23 legislature or the governor to appropriate more money to
24 address the problems in the Order to Show Cause. So the point
25 is that the liability is clear. The defendants have failed 04:02PM

1 utterly to meet the tests laid out by the Ninth Circuit case
2 law to defend against contempt. They haven't provided any sort
3 of detailed or comprehensive explanation as to the root causes
4 of noncompliance with the Court's order or what steps they took
5 for each performance measure at each institution.

04:03PM

6 So with regard to the remedies, plaintiffs have some
7 thoughts that we would like to share with you. First of all,
8 according to the defendants' filings, the most recent one last
9 Friday that was filed in response to our declaration setting
10 out 420 apparent instances of noncompliance they have now
11 admitted to 1,314 instances of noncompliance in the month of
12 December. In the month of January they admitted to 869
13 instances of noncompliance. That adds up to 2,183 admitted
14 instances of noncompliance. And the Court had threatened a
15 \$1,000 sanction so that would be \$2,183,000.

04:03PM

04:03PM

16 The defendants have had plenty of time to purge this
17 contempt sanction. They had notice of it. They could fix
18 their behavior and begin living up to their promise to meet the
19 stipulation. So to the extent that they may face a fine of
20 over \$2.1 million defendants have nobody but themselves to
21 blame.

04:04PM

22 Additionally, plaintiffs request that in addition to
23 fine and penalties, your order should include a provision that
24 ADC cannot be indemnified by Corizon because otherwise this
25 fine is going to have zero coercive effect on Director Ryan and

04:04PM

1 Defendant Pratt. Mr. Struck talked about indemnification for
2 individual lawsuits. Again, that shows that the two people who
3 have the nondelegable duty and responsibility to ensure that
4 people in their custody get constitutionally adequate medical
5 care don't have skin in the game. They are not feeling the
6 hurt. So other courts in other cases have included
7 non-indemnification clauses in contempt orders, and we urge the
8 Court to do so.

04:04PM

9 THE COURT: Do you have citations for those cases?

10 MS. KENDRICK: One is *Intervert, Incorporated versus*
11 *Merial, M-E-R-I-A-L, Limited*, 241 FRD 55, the district of the
12 District of Columbia, 2007; also *U.S. versus Sungard Data*
13 *Systems*, 173 F. Supp 20, again, from the District of Columbia
14 District from 2001.

04:05PM

15 And there's an analogous Supreme Court case that has
16 to do with Rule 11 sanctions in which the Supreme Court said
17 that Rule 11 sanctions, that there can be a requirement that
18 the indemnification not come from a law firm or a client but
19 rather from the attorney himself or herself. And that case is
20 *Pavelic, P-A-V-E-L-I-C, and LeFlore, L-E-F-L-O-R-E versus*
21 *Marvel Entertainment*. And the cite is 493 U.S. 120, 1989.

04:05PM

04:05PM

22 So we believe that the sanctions should go to the
23 Court fund and the Court should use that money to hire experts
24 on auditing and monitoring, which is something that plaintiffs
25 have been asking for over a year because defendants have proven

04:06PM

1 time and again that they are either incapable or unwilling to
2 do monitoring accurately in such a way that the Court has
3 meaningful information. And they have now testified and argued
4 that their contractor is incapable of doing this sort of
5 monitoring. So it appears the Court may need to take matters
6 into its own hand and appoint a Rule 706 expert or experts on
7 auditing and monitoring, because what defendants are doing is
8 not working and it's broken.

04:06PM

9 Finally, we ask the Court to include some injunctive
10 relief in its order. The Court has broad powers to include an
11 injunctive relief and a remedy, and we request that the Court's
12 order forbid the defendants from signing the new contract with
13 Corizon or any other contractor to provide health care for the
14 next five years until the Court, or your designee or expert,
15 reviews the proposed contract to see if it is in the best
16 interest of the plaintiff class. We have heard endlessly that
17 the current contract ties the defendants' hands, so therefore
18 the Court needs to review the pending contract to see if all of
19 the same problems are still in there. This is not something
20 unusual or out there in the case of *Plata versus*

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21 *Schwarzenegger*, the District Court for the Northern District of
22 California issued an order that directed the California
23 Department of Corrections to work with the Court's expert to
24 develop and ensure standards for medical contract management
25 with specialists for the Court to review and to approve to make

04:08PM

1 sure that it ensured the best interest of the plaintiff class.

2 If the Court likes, I have a copy of the order for you
3 and for defendants. It was issued in 2006 prior to the
4 electronic case filing on PACER so you can't get it that way.

5 And we believe that you issuing an order forbidding
6 ADC from extending the Corizon contract or entering in with a
7 new business is completely within your bounds and your powers
8 because the arrangement with Corizon apparently has led to the
9 current dire situation. And so it makes no sense for us to sit
10 here and watch them enter into another contract that will, this
11 time, cover five years and tie their hands in such a way.

12 Finally, we ask that your injunctive relief also
13 examine and, if necessary, invalidate the state laws that deal
14 with the specialty care caps and, if needed, with
15 privatization. One possible alternative would be to modify it
16 so that the requirement is that the contract has to be with
17 not-for-profit organizations or universities. Other states,
18 including Texas, have the university medical system providing
19 and overseeing the medical care. And while that's not
20 necessarily perfect or things would change, it does remove the
21 profit motive that the Court has alluded to multiple times with
22 a for-profit corporation.

23 Finally, we ask that until there's further notice the
24 Court needs to make clear that this Order to Show Cause is in
25 effect for future months and future fines could be issued.

04:08PM

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1 Thank you.

2 THE COURT: Thank you very much.

3 You may submit to defendants and to the Court the
4 written order that you have procured that you mentioned in your
5 closing. 04:10PM

6 Last word, Mr. Struck.

7 MR. STRUCK: Yes, Your Honor.

8 Your Honor, of course we disagree with the plaintiffs
9 recitation of what the evidence showed here. We believe that
10 the evidence showed that we did take all reasonable steps in
11 order to comply with your October 10th order. 04:10PM

12 With respect to the plaintiffs' requested relief, we
13 believe that your October order addressed the month of
14 December, not January, so whatever -- if sanctions are to be
15 considered by the Court, it should be for the month of
16 December. With respect to the plaintiffs' argument that the
17 director and the State need have to skin in the game, the
18 contract between Corizon and the State require that Corizon
19 indemnify the State in the event Corizon fails. Corizon is the
20 entity that needs skin in the game in order to comply with its
21 contract, and that is -- there was testimony with respect to
22 the sticks that the director had to get Corizon to comply with
23 the contract. That is a big stick. And the defendants
24 negotiated for that stick and need it in order to get
25 compliance. That is the most effective way to get the third 04:11PM

1 party health care provider's attention.

2 THE COURT: What is your view with respect to what Ms.
3 Kendrick said regarding the indemnification obligation that may
4 exist if there is a contempt sanction imposed in this case upon
5 the defendants? Do they have an indemnification right from
6 Corizon? 04:11PM

7 MR. STRUCK: There is, and there was testimony about
8 that from Director Ryan. And he -- they pointed out on, I
9 think, I believe it was contract Amendment 14, provided -- or
10 excuse me, 10 -- provided that in the event that the Court 04:12PM
11 determined that there had been a failure with respect to the
12 health care, and I'm not talking about the max custody or
13 anything to do with that the Department would be responsible
14 for, but in the event that the Court determined that there was
15 noncompliance with medical provisions of the stipulation that 04:12PM
16 Corizon would indemnify the State with respect to those
17 particular sanctions. And that was specifically negotiated for
18 by the State in order to gain compliance. They -- the State
19 needed that particular provision in order to get someone's
20 attention to people that are providing health care. 04:13PM

21 THE COURT: Specifically just to make sure there's no
22 doubt about this, if the Court enters a sanction pursuant to
23 its OSC order against the defendants in this case, your view is
24 that the current indemnification obligation that exists under
25 the contract with Corizon requires Corizon to indemnify the 04:13PM

1 defendants in this case for such OSC penalties.

2 MR. STRUCK: Yes. That is the provision in the
3 contract. And that would --

4 THE COURT: So then Ms. Kendrick's retort to that
5 would be that shows the defendants in this case, the obligors 04:13PM
6 on the stipulation, don't have skin in the game because if they
7 are sanctioned for failing to meet the stipulation any sanction
8 just gets passed off to somebody else.

9 MR. STRUCK: Well, a couple of things. First, I'm not
10 certain that Corizon would agree. And I suspect that there 04:14PM
11 will be some discussion with respect to whether or not Corizon
12 believes that they are responsible for it.

13 THE COURT: So you anticipate that Corizon would say
14 that with respect to an OSC sanction that they are not
15 obligated under the contract amendment? 04:14PM

16 MR. STRUCK: I'm speculating, but I think my
17 speculation is probably pretty accurate.

18 THE COURT: Okay.

19 MR. STRUCK: But as far as my clients, their position
20 is that they specifically negotiated for that in order to help 04:14PM
21 gain compliance with the stipulation as an incentive for
22 Corizon to comply and to meet these performance measures.

23 With respect to Ms. Kendrick was talking about the
24 failure, the utter failure of the particular contract, and I
25 think that there has been evidence in this case that 94 percent 04:15PM

1 compliance has been achieved, and that isn't utter failure.
2 Now, I understand the Court is concerned about the 11
3 performance measures at issue.

4 THE COURT: And I'm also concerned about whether or
5 not the 94 percent is an accurate measure because there are 04:15PM
6 incorporated within that 94 percent errors of evaluation that
7 are errors that are borne out of inconsistent -- well, not --
8 application of measures that are inconsistent with the Court's
9 rulings on how the stipulation should be applied. There are
10 also issues with respect to whether or not we can trust overall 04:15PM
11 the State's numbers where the focus of the light of the Court
12 is not looked upon because we saw recently that when you had
13 the obligation to tell us every single case where you had
14 failed to comply with the performance measures in December you
15 got it wrong a significant number of times. 04:16PM

16 So if I see where I am shining my flashlight with
17 great intensity that you don't get it right, what comfort do I
18 have in these 94 percent where the flashlight isn't even
19 looking that you are telling me the right story?

20 MR. STRUCK: Let me respond to those two areas. First 04:16PM
21 the 94 percent utilizes the appropriate methodology. There are
22 two performance measures that are still at issue that the Court
23 hasn't determined and the parties have been going back and
24 forth on. I believe those are 85 and 86. In terms of the 94
25 percent compliance, that uses the appropriate methodology and 04:16PM

1 it's my understanding under 85 and 86, under the methodology,
2 either the one that is being proposed by Mr. Fathi or the one
3 that is being proposed by the defendants, under either, the
4 performance measure will be met. So the 94 percent is
5 accurate.

04:17PM

6 With respect to the second argument, the plaintiffs
7 have been planting the seed with this Court for months and
8 months and months without showing any objective evidence that
9 the Monitoring Bureau is making all these mistakes. Every
10 single time we have gotten a letter from them articulating
11 these mistakes we have reviewed it and found approximately 1
12 percent mistake rate. That is not -- that doesn't show failure
13 by the Monitoring Bureau. And, in fact, one of the reasons why
14 we're here is because the Monitoring Bureau said that these 11
15 performance measures are failing and some of them are still
16 failing.

04:17PM

04:17PM

17 THE COURT: Right. And so what I have seen in
18 fairness as an interim report to you, what I have seen is that
19 there are some people in the Monitoring Bureau whose actions
20 have come to the Court attention that we think they are doing
21 exactly what is expected and that they are honorable and that
22 they are monitoring the performance measures in a fair and
23 reasonable way. There has also been evidence in the case where
24 that's called into question and that's unclear whether or not
25 the monitors have been acting appropriately. That is a subject

04:17PM

04:18PM

1 that remains open that the Court is continuing to take evidence
2 on that subject and will continue to take evidence on the
3 subject about whether or not we can trust the entire monitoring
4 process.

5 But I just raise it as something that should be part 04:18PM
6 of this record, and that is there have been sufficient examples
7 to demonstrate that this is an area of concern and so we have
8 to run it down.

9 MR. STRUCK: And you are right. That evidence hasn't
10 come in yet, and we're confident that the Court will find that 04:18PM
11 the allegations of Ms. Watson, who is, in the defendants' view,
12 confused with respect to her testimony regarding that
13 particular issue, will fall in favor of the defendants; that,
14 in fact, the monitor in question is one of those monitors that
15 the Court just mentioned that is doing their job and holding 04:19PM
16 Corizon's feet to the fire.

17 But with respect to the numbers that you are talking
18 about in December and the failure to provide the Court with
19 accurate numbers regarding December, those were numbers that
20 were put together by Corizon, not the Monitoring Bureau. So I 04:19PM
21 want the Court to clearly understand that those numbers Ms.
22 Kendrick filed the declaration on were not put together by the
23 defendants. They were put together by Corizon.

24 THE COURT: If they're flawed numbers, I need to
25 inquire into them because they become the basis for the 04:19PM

1 enforcement action in this stipulation.

2 MR. STRUCK: I agree, Your Honor, and you did inquire
3 into them. The point I want to make is that isn't a Monitoring
4 Bureau failure. That was a failure of the numbers we received
5 from the third party health care provider.

04:19PM

6 So I guess in closing, the defendants request that the
7 Court not find them in civil contempt and that should the Court
8 determine that some -- but should the Court determine some sort
9 of civil sanction is in order that the Court not determine that
10 the contract with respect to who might be required to pay that
11 particular sanction isn't valid and it would have to come
12 directly from the State. That takes away the biggest hammer
13 that the State has in order to gain compliance. And that
14 defendants request that the Court not make that determination
15 in the event that the Court determines that some sort of
16 sanction is appropriate.

04:20PM

04:20PM

17 With respect to the plaintiffs' request for injunctive
18 relief in asking for the Court to order the legislature to
19 change legislation or order the State to not contract with a
20 particular provider, it's the defendants' position that the
21 stipulation doesn't allow for you to do that, and that the --
22 in terms of relief, the relief should be narrowly tailored with
23 respect to complying, getting the defendants to comply with the
24 11 performance measures that are at issue, not throwing out an
25 entire contract because of these 11 performance measures

04:21PM

04:21PM

1 particularly when we have 94 percent compliance on the
2 performance measures.

3 THE COURT: I understand that you have filed papers
4 with the Court in which you argue that the stipulation doesn't
5 authorize the imposition of sanctions that the Court's
6 contemplating. But what you just raised now, I want to
7 understand whether when you state that the Court is not
8 authorized to do, and the example you used, to order the
9 legislature to do something, when you say I'm not empowered to
10 do that, is it because I don't have this OSC power or is it
11 something different you see that limits my role in the
12 stipulation beyond that, limits my role to enforce the
13 stipulation that's in the stipulation when you say the
14 stipulation doesn't permit that?

15 MR. STRUCK: Well, we believe the stipulation is a
16 contract, and that the particular contractual remedies are
17 probably what would apply. And in this particular case --

18 THE COURT: Why should I think that? Because it says
19 all remedies permitted by law. Again I may be missing one of
20 the words but that's essentially what it says, doesn't it?

21 MR. STRUCK: The stipulation does say that. It does.
22 But in terms of what the plaintiffs are asking, we believe that
23 goes far beyond certainly what the stipulation envisioned and
24 certainly what is required to remedy what is at issue in this
25 Order to Show Cause, and that is these 11 performance measures

1 at these five facilities.

2 THE COURT: I'm trying to understand where the
3 limitation is in the words "all remedies permitted by law." If
4 it's something the courts have done otherwise, I assume that
5 it's lawful. So why would the statement that all remedies
6 permitted by law restrict me in that way? 04:23PM

7 MR. STRUCK: Your Honor, it's defendants' position
8 that this is not a consent decree as plaintiffs are trying to
9 liken it to.

10 THE COURT: No. It's wholly apart from that. But as 04:23PM
11 I read the stipulation it says that I have the two limitations
12 that we all know about, can't order -- the State to hire
13 particular type or number of employees, and I can't order you
14 to build new prisons. But it says otherwise I have all
15 remedies permitted by law. And you have said because it's not 04:23PM
16 a consent decree I'm somehow limited. But I'm not focusing on
17 that. I'm focusing on these words, all remedies permitted by
18 law. And I'm just trying to understand what the State's
19 position is with respect to where you are finding the
20 restriction where it says all permitted by law. 04:24PM

21 MR. STRUCK: The State's position is remedies that
22 will correct the particular contractual breach, that's what the
23 State's position is, that this is a contract and --

24 THE COURT: Does it say that in the stipulation
25 someplace? 04:24PM

1 MR. STRUCK: That it's a contract?

2 THE COURT: Those words that you just said that are
3 the qualifiers.

4 MR. STRUCK: I was informing the Court what the
5 State's position was with respect to the stipulation that was
6 negotiated. 04:24PM

7 THE COURT: Mr. Bojanowski is bringing in some kind
8 of --

9 MR. BOJANOWSKI: I just want to give him the language,
10 Your Honor, so he can have it. 04:24PM

11 THE COURT: My battery just went dead. The iPad I
12 have been waving is apparently not generating energy on its
13 own.

14 MR. STRUCK: The court's familiar with the
15 stipulation. 04:25PM

16 THE COURT: I'm trying to understand -- can you read
17 the me the language?

18 MR. STRUCK: Sure. It's in Paragraph 36.

19 THE COURT: Thank you.

20 MR. STRUCK: The language says, "In the event the
21 Court finds that the defendants have not complied with the
22 stipulation, it shall in the first instance require the
23 defendants to submit a plan approved by the Court to remedy the
24 deficiencies identified by the Court. In the event the Court
25 subsequently determines that the defendants' plan did not 04:25PM

1 remedy the deficiencies, the Court shall retain the power to
2 enforce the stipulation through all remedies provided by law.

3 THE COURT: So all remedies provided by law. Those
4 are the operative terms. And I just wonder where it is either
5 in those words or someplace else in the stipulation where you
6 think I'm limited to not have equitable powers.

04:25PM

7 MR. STRUCK: To enforce the stipulation.

8 THE COURT: Why wouldn't it be something saying all
9 remedies permitted by law restrict me to use the Court's
10 equitable powers?

04:26PM

11 MR. STRUCK: The Court's limited powers go beyond
12 what's required to enforce the stipulation. It's the
13 defendants' position that the Court is going beyond what is
14 allowed in the stipulation because those words enforce -- the
15 power to enforce the stipulation precede the --

04:26PM

16 THE COURT: If I make a finding that nothing else
17 could work then employing as part of the remedial measure the
18 Court's equitable and legal powers, why would it be
19 inconsistent with that?

20 MR. STRUCK: And again, I don't know what the Court is
21 going to remedy.

04:26PM

22 THE COURT: I don't either. You are saying I don't
23 have the ability to even consider equitable remedies, and I'm
24 just wondering why it is that you think that stripped away from
25 the Court's understood and accepted powers and certainly all

04:26PM

1 permitted by law, so the law certainly permits me to exercise
2 equitable powers. Why would it be?

3 MR. STRUCK: Your Honor, in terms of the equitable
4 remedies proposed by the plaintiffs, we believe that that goes
5 beyond the stipulation because that goes beyond what's
6 required. 04:27PM

7 THE COURT: I understand your argument. All right.

8 Thank you very much. Thank you for the presentation
9 of evidence on the Order to Show Cause and the argument. I
10 will take it under advisement and get an -- issue an order
11 addressing this matter very promptly. 04:27PM

12 The other matter is that we'll also work on and get
13 out shortly the e-mail that I mentioned earlier with respect to
14 the records that would be helpful for the Court to have in
15 considering this issue. So we'll take up tomorrow. I'm going
16 to give the court reporter the rest of the day off. So we'll
17 take up tomorrow at 9 a.m. and proceed with the agenda items
18 that we have. 04:27PM

19 Anything that we have to just address at this
20 immediate moment? 04:27PM

21 MS. KENDRICK: No, sir. Thank you.

22 THE COURT: From defendants?

23 MR. STRUCK: No, Your Honor.

24 THE COURT: Thank you all very much.

25 (Proceeding concluded at 4:28 p.m.) 04:28PM

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C E R T I F I C A T E

I, LAURIE A. ADAMS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 12th day of April, 2018.

s/Laurie A. Adams

Laurie A. Adams, RMR, CRR