

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Victor Parsons, et al., on)
 behalf of themselves and all)
 others similarly situated;)
 and Arizona Center for)
 Disability Law,)
 Plaintiffs,) No. CV 12-00601-PHX-DKD
 vs.) Phoenix, Arizona
 Charles Ryan, Director,) March 27, 2018
 Arizona Department of) 9:02 a.m.
 Corrections; and Richard)
 Pratt, Interim Division)
 Director, Division of Health)
 Services, Arizona Department)
 of Corrections, in their)
 Official capacities,)
 Defendants.)

BEFORE: THE HONORABLE DAVID K. DUNCAN, MAGISTRATE JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS-AMENDED

(Evidentiary Hearing/Order to Show Cause)
Day 5
(Pages 911 through 1119, inclusive.)

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Proceedings Reported by Stenographic Court Reporter
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A P P E A R A N C E S

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I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
CHARLES L. RYAN				
By Mr. Struck	915		1022	
By Mr. Fathi		955		
RICHARD PRATT				
By Ms. Kendrick (Resumed)		1054		
CARSON MCWILLIAMS				
By Ms. Love	1077			

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1 P R O C E E D I N G S

2 THE MAGISTRATE JUDGE CLERK: Civil Case Number 12-601,
3 Parsons et al. versus Ryan et al., on for continuation of
4 evidentiary and order to show cause hearings.

5 THE COURT: Good morning. May I have counsel's
6 appearances for the record, please. 09:04AM

7 MR. FATHI: Your Honor, David Fathi of the ACLU
8 National Prison Project for the plaintiff class.

9 THE COURT: Thank you. Good morning.

10 MS. KENDRICK: Good morning, Your Honor. Corene
11 Kendrick from the Prison Law Office for the plaintiff class. 09:05AM

12 THE COURT: Good morning.

13 MS. EIDENBACH: Good morning, Your Honor. Kirsten
14 Eidenbach for the prisoner plaintiff class. Behind me is Maya
15 Abela from the Arizona Center for Disability Law. 09:05AM

16 THE COURT: Thank you. Good morning.

17 MR. STRUCK: Good morning, Your Honor. Dan Struck,
18 Rachel Love, Tim Bojanowski, and Richard Valenti for
19 defendants.

20 THE COURT: Good morning, everyone. Are we ready to
21 proceed directly with Director Ryan, or is there anything we
22 need to take up in the first instance? 09:05AM

23 MR. STRUCK: We're ready, Your Honor.

24 THE COURT: Director Ryan, if you would kindly step up
25 to the clerk and be sworn. 09:05AM

1 (The witness was sworn.)

2 THE MAGISTRATE JUDGE CLERK: Thank you. Please have a
3 seat.

4 THE COURT: Good morning. Welcome back.

5 THE WITNESS: Good morning.

09:05AM

6 THE COURT: Thank you.

7 The microphone is not attached there. Most witnesses
8 find if they just move it closer on the platform there that it
9 is handier, and it means the court reporter can hear you.

10 Thank you. You may be seated.

09:06AM

11 MR. STRUCK: Thank you, Your Honor.

12 CHARLES L. RYAN,

13 called as a witness herein, having been first duly sworn, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. STRUCK:

17 Q. Good morning, Director.

18 A. Good morning.

19 Q. Would you state your name, please?

20 A. Charles L. Ryan.

09:06AM

21 Q. And what is your occupation?

22 A. I'm the Director of the Arizona Department of Corrections.

23 Q. And how long have you been in that position?

24 A. This is my 10th year serving as the Director.

25 Q. How long have you been with the Arizona Department of

09:06AM

1 Corrections?

2 A. I began my career with the Arizona Corrections in 1977 and
3 worked and promoted through various positions from program
4 officer, classification officer. I was responsible for design,
5 staffing and activation of the prison's Deputy Warden, Warden,
6 Senior Warden, Deputy Director, Interim Director. Then I
7 retired the summer of 2003 and I returned to the Department in
8 January of 2009 as the Director.

09:07AM

9 Q. Who is your boss?

10 A. Governor Ducey.

09:07AM

11 Q. Now, one of the things that -- what are some of your
12 responsibilities with respect to budgeting for the Department
13 of Corrections?

14 A. I'm responsible for overseeing of the operational budget of
15 the Department and being party to the preparation from fiscal
16 year to fiscal year for the continuation of that budget and/or
17 the submission of decision packages to expand that budget.

09:07AM

18 Q. What is the current budget, the total budget for the
19 Department?

20 A. The operating budget for FY 18 is a little under \$1.2
21 billion.

09:08AM

22 Q. Obviously, the reason why we're here is the Parsons versus
23 Ryan stipulation, who's ultimately responsible for the delivery
24 of constitutionally-adequate health care to the roughly 35,000
25 inmates in the Arizona Department of Corrections system.

09:08AM

1 A. The Department of Corrections is ultimately responsible.

2 Q. And you are the head?

3 A. And as the Director, I am ultimately responsible.

4 Q. Now, we all know that the health care is currently being
5 provided by third-party vendor Corizon. How did that come
6 about?

09:08AM

7 A. The Arizona Legislature in the fall of 2008 made a decision
8 that legislation would be introduced in the 2009 session to
9 migrate from self-operated health care to privilege-tied health
10 care, so when I returned to the Department that's what I was
11 going to inherit, and that decision had already been made.

09:09AM

12 Q. Prior to that had Arizona Department of Corrections ever
13 utilized a private vendor to provide its overall health care?

14 A. Not overall health care. The Department had been a
15 self-operating health care provider system.

09:09AM

16 Q. And so with respect to having to inherited this legislative
17 decision with respect to the privatization of health care, what
18 kind of challenges or what did the Department have to do with
19 respect to putting a vendor in place?

20 A. There were a number of challenges because the way the
21 legislation was written it was predicated on the fiscal year
22 2008 allocation with a maximum allocation of \$137 million.
23 Therefore, an RFP had to be developed and eventually was put on
24 the street, if you will, and responsive vendors submitted
25 proposals. We evaluated those proposals in 2009.

09:10AM

09:10AM

1 And the requirement simply was that whoever was to be
2 awarded had to do so at a rate less than what the allocation
3 required. We did a comparison to what our actual expenditures
4 had been as self-op and we came to the conclusion, because of
5 the approximate 122 to 124 million dollars that the self-op
6 expenditure had experienced, that the proposals were
7 significantly higher, although under the threshold of \$137
8 million.

09:11AM

9 Given the fiduciary responsibility that I oversaw for
10 the Department, we went back across the street to the
11 legislature, told them that these proposals were nonresponsive,
12 and therefore, the statute was modified and changed and in
13 essence what was given consideration through that revision was
14 the best qualified was also within that allocation.

09:12AM

15 Three vendors -- excuse me. Three vendors then ended
16 up submitting responsive proposals, that was Wexford, Corizon,
17 and Centurion, and we evaluated those proposals and we ended up
18 making an award to Wexford. And that took effect July 1st of
19 FY 11.

09:12AM

20 Anyway, one of the challenges was that they had to
21 identify as an organization where they were going to obtain the
22 health care staff from. In the negotiations with them, it was
23 required that they accept and hire the currently employed
24 health care staff from the Department of Corrections, and as I
25 recall, almost without exception, they hired those employees.

09:12AM

09:13AM

1 That contract continued for about eight months, at
2 which time Wexford basically communicated to the Department
3 that they wanted out of the contract. We came to terms with
4 them. We went back to the State Procurement Officer and the
5 Assistant Attorney General that oversaw procurement for the
6 Department and were authorized through a competition
7 impracticable to only reapproach the two remaining vendors who
8 had submitted proposals, one being Corizon and the other
9 Centurion.

09:13AM

10 We evaluated their proposals, asked them to resubmit,
11 either confirm or modify their proposals. They both did so.
12 Centurion provided a one-page recommendation which, in essence,
13 was the same as what they previously submitted. We determined
14 that was not responsive and so the award through the
15 competition impractical was made to Corizon.

09:14AM

09:14AM

16 Q. And what was the total contract amount? And if you have --
17 I know you have some notes.

18 A. The original total contract amount was \$125.3 million.

19 Q. How many FTEs did that cover?

20 A. At that time, the original was 759.8 employee positions.

09:15AM

21 Q. And has that increased overtime?

22 A. It did. It increased by another 165 positions that brought
23 their staffing number up to 925.0 positions, and that
24 represented a contract amount of \$148.8 million, which is the
25 current amount to date.

09:15AM

1 Additionally, Corizon at their own expense brought on
2 an additional 79 positions so that their staffing at the time
3 is 1,004 positions.

4 Q. That's up from 2013 759 positions?

5 A. That is correct. Yes, it is. 09:16AM

6 Q. And has the -- how has the inmate population -- has it gone
7 up at all since March of 2013 to today?

8 A. The population had gone up for a period of time but the
9 Department's population has levelled off during the previous 18
10 months. The Department's population reached its all-time 09:16AM
11 historical high during the month of June 2016 and we surpassed
12 43,000 inmates. We started fiscal year 17 at 42,902. We ended
13 that fiscal year at 42,200. Today the count is less than
14 42,000. It's under 41,800.

15 Q. To be clear, does that 41 -- roughly 41,000 number include 09:17AM
16 inmates who are in private facilities?

17 A. It does.

18 Q. And those inmates aren't covered by -- they aren't provided
19 health care by Corizon, is that correct?

20 A. That is correct. They are not. 09:17AM

21 Q. Do you know what the number is with respect to -- and I'm
22 sorry I am putting you on the spot. Do you know roughly what
23 the number is currently with respect to the inmates that are
24 housed in state facilities that are covered by the Corizon
25 contract? 09:17AM

1 A. It's over 35,000.

2 Q. And that population, is that roughly about the same between
3 2013 and today with respect to the inmates that are being
4 covered by the Corizon contract?

5 A. It's about the same and there has been some variance. 09:18AM

6 Q. Now with respect to contracting with Corizon in March of
7 2017, have you had challenges with respect to the fact that you
8 are not -- it's not a self-operated medical care delivery
9 system since March of 2017? I know that's a very open-ended
10 question. 09:19AM

11 A. I think you're making reference to the wrong year.

12 Q. I'm sorry. March of 2013.

13 A. Thank you.

14 Q. And can you tell us what -- just generally, what kind of
15 challenges that the Department faces with respect to running 09:19AM
16 from what you were doing in, I guess, February of 2000 -- or I
17 guess prior to Wexford coming on board, the self-operated
18 health care delivery system as opposed to dealing with a
19 third-party vendor providing health care? What -- just
20 generally, what kind of challenges as Director do you face? 09:19AM

21 A. Well, many of the challenges that we faced certainly was
22 being able to obtain outside consultant providers, outside
23 hospitalization, locations. If those inmates required outside
24 treatment and in-patient care in a hospital setting, we have
25 had contract arrangements with hospitals in Tucson. Years ago 09:20AM

1 it was with St. Mary's. Then it was with the University
2 Physicians Hospital, which was being operated by the University
3 of Arizona, the Tempe St. Luke's Hospital. We have had inmates
4 that have had to have been housed in the Maricopa Medical
5 Center. And all of those arrangements, if you will, have come
6 and gone by the wayside. So that certainly has always been a
7 challenge if we have to refer people to outside consultants.

09:20AM

8 Q. And with respect to trying to replace those outside
9 consultants, is that something that the Department relies on
10 Corizon to do?

09:21AM

11 A. Yes, it is.

12 And we are, frankly, dependent upon them to do that.
13 We have taken it to the point at the request of Corizon to
14 expand the inpatient component bed space in the prisons, and we
15 have expanded them from, I think, 107 IPC beds to upwards of
16 144.

09:21AM

17 In terms of inmates being referred to outside
18 consultants and/or hospitals, one of the major challenges is
19 that we have to provide the security staff of two officers per
20 offender to oversee and supervise that inmate who is assigned
21 to a hospital setting, being mindful of when they are in a
22 hospital setting they are not in a secure ward. So we have to
23 identify officer positions, we move them from the prisons and
24 have them accompany the inmate to that hospital, and then they
25 have to be relieved after every eight hours by another team of

09:22AM

09:22AM

1 two.

2 That represents a major challenge to the Department
3 particularly given our vacancy rates, and the purpose of the
4 IPC beds was to have those inmates return from the hospital
5 setting as soon as possible so that they could be placed in
6 an IPC setting at a prison where those IPC beds would be
7 located.

09:23AM

8 Q. When you refer to vacancy rates, vacancy rates for what
9 positions are you talking about?

10 A. Correctional officers. The Department has authorized 6,655
11 CO positions, and the vacancy rate -- and the vacancies of
12 those CO positions this week is 918, or approximately 13.8
13 percent.

09:23AM

14 Q. And has that been a continuous challenge for the
15 Department?

09:23AM

16 A. It has been a continuous challenge for the Department for a
17 number of years, although we have, if you will, weaned, in
18 other words, eliminated, all the wasteful steps in recruiting
19 and attracting staff and we reduced it from 120 days down to
20 28, and that is sustainable. The issue of retention is the
21 challenge.

09:24AM

22 And in terms of salaries and what we pay the
23 corrections officers, we are no longer competitive and have
24 not been -- they have not seen a pay package increase for 12
25 years. So we lose a lot of corrections officers positions and

09:24AM

1 we lose them within the first four-year period of time.

2 Q. Basically, the officers are using The Department of
3 Corrections as a stepping stone into different areas of law
4 enforcement?

5 A. It might either be to a different area of law enforcement 09:24AM
6 or it may be into another corrections system, or correctional
7 agency, primarily because of compensation. The survey that we
8 have done of our corrections officers as a break-through
9 project and obtaining from them as the voice of the customer
10 why they were leaving, primarily it has been because of 09:25AM
11 compensation.

12 When they have been queried in terms of what would
13 help keep you here and that would -- their answer was and is an
14 increase in compensation.

15 So we are not competitive when we look at the other 18 09:25AM
16 detention or corrections agencies within the State of Arizona.
17 We're in the bottom third. In the western United States we're
18 also in the bottom third.

19 Q. And what have you done to try and bridge the gap between
20 what the corrections officers are being paid now at the 09:25AM
21 department and what you think would make it competitive and
22 allow you to retain more corrections officers?

23 A. The strategy that I employed in FY 17 was to use some of
24 the vacancies savings, monies which is generated by vacancy
25 open positions, to give those officers a retention bonus of 09:26AM

1 \$1,500 at the end of FY 17. We also use these vacancy savings
2 dollars to provide a merit increase for those employees who
3 were eligible for performance pay increases as well.

4 I intend to take a very similar strategy relative to
5 merit pay this year. We had modified the evaluation period for
6 the employees to end at the end of February, that we take the
7 month of March to evaluate them, and then with those vacancy
8 savings dollars in the final quarter of the year we make our
9 decision in terms of the funding that is available for merit
10 pay consideration based on their performance evaluation.

09:26AM

09:27AM

11 Q. Now, the reason why you are here today is with respect to
12 the Court's order of October 10, 2017 regarding 11 performance
13 measures at specific facilities. You are aware of that order?

14 A. Yes, I am.

15 Q. Now, have you had challenges with respect to utilizing a
16 third-party provider and having to comply with the stipulation
17 that was entered into, the settlement agreement entered into in
18 Parsons versus Ryan that was approved by the Court in, I
19 believe, October or February of 2015?

09:27AM

20 A. Yes. We certainly have had challenges with achieving
21 performance measure compliance from our vendor, and that has
22 been something that we have strived to overcome. And we put
23 forth, I believe, considerable effort in trying to have the
24 vendor achieve compliance and fulfill that. The order from
25 Magistrate Duncan on October the 10th is very explicit and very

09:27AM

09:28AM

1 clear.

2 THE COURT: Director Ryan, it would be wrong for me to
3 refer to you as something other than your title. It's wrong
4 for you to refer to me as something other than my title. The
5 title "Magistrate" no longer exists in the federal system. 09:28AM
6 Congress changed it in 1990. They created the position of
7 Magistrate Judge. So you can refer to me as a Magistrate
8 Judge, you can refer to me as a Judge, but you can't refer to
9 me as a Magistrate because Magistrate no longer exists. It's
10 simply an adjective now that modifies judge. 09:29AM

11 It would be similar -- you have military exposure, I
12 know, and so you would imagine what would happen if you
13 referred to the Lieutenant Colonel as the Lieutenant. That's
14 what you have just done to me.

15 So if you would, kindly, in the future, follow what 09:29AM
16 Congress has prescribed in 1990.

17 Thank you, sir.

18 THE WITNESS: Magistrate Judge Duncan, I apologize
19 and I stand corrected.

20 THE COURT: No reason to apologize. They used to 09:29AM
21 say -- grandmothers used to say, "I don't care what you call
22 me; just don't call me late for dinner." Sometimes titles
23 don't matter, but actually sometimes titles do matter, because
24 Congress actually wanted to aggrandize the role, they wanted to
25 change the role. So there was a previous position that the 09:29AM

1 magistrates performed, and they changed that position, gave
2 them the opportunity for them to serve as judges, as I am in
3 this case. Previously, that wasn't possible under the
4 commissioner system and under the magistrate system.

5 And so the changing of the title reflects that changed
6 role, and if we respect what Congress has done we have to also
7 use that title because they entered into serious discussions
8 about what should the appropriate title be. Whereas in the
9 United States there still exists magistrates, the City of
10 Phoenix has magistrates and other municipalities have
11 magistrates, but they are not magistrate judges, they are
12 magistrates. So it would be appropriate to call them
13 magistrates still. It's just not appropriate here.

14 But thank you very much. No apologies necessary.
15 Thank you, sir.

16 THE WITNESS: Okay. Thank you.

17 BY MR. STRUCK:

18 Q. And you have a stack of exhibits in front of you there,
19 Director. Let me -- if you wouldn't mind pulling out Exhibit
20 201, which is probably closer to on the bottom.

21 Do you have it?

22 THE COURT: You may assist, Mr. Struck.

23 THE WITNESS: Yes, I do.

24 BY MR. STRUCK:

25 Q. And there was some testimony yesterday from Mr. Pratt

1 regarding 201. What is Exhibit 201?

2 A. Exhibit 201 is Amendment Number 10, a contract amendment to
3 the contract that we have with Corizon.

4 Q. And it looks to be dated May 11, 2015. Is that right?

5 A. That is correct.

09:31AM

6 Q. Okay. What's the background, if you recall, with respect
7 to the purpose behind Amendment 10?

8 A. The purpose of Amendment 10, in part, was an amendment so
9 that we could exercise a year for -- a renewal option for a
10 one-year period from March 4th of 2016 to March 3rd, 2017. It
11 also had the potential year five renewal for Corizon to
12 exercise its second annual renewal option for contract year 5
13 if ADC requested a 4.0 CPI increase to its annual budget
14 request for contract years 4 and 5, and if the State
15 Legislature authorized the 4 percent CPI increase for contract
16 year 4 this would extend the contract until March 3rd, 2018.

09:31AM

09:32AM

17 Q. Okay.

18 One of the things that Ms. Kendrick asked Mr. Pratt
19 yesterday was with respect to an increase, and if you see, if
20 you look at the first page, it talks about a CPI increase.

09:32AM

21 What is that?

22 A. Consumer price increase based on the medical rates for, if
23 you will, a metropolitan area, and I believe in this case it
24 was based on that rate for Phoenix. The vendor asked for that
25 type of a CPI and indicated that if that was not approved then

09:33AM

1 they could go ahead and serve notice to the Department of
2 Corrections for 180 days that it would intend to cancel the
3 contract.

4 Q. There was also some additional provisions in this
5 modification as well. If you look at Page 3 of 4, the bottom
6 of the page, it says Exhibit 201.3.

09:33AM

7 Are you there?

8 A. Yes, I am.

9 Q. Under Subsection 6, there's a section called Contract
10 Sanctions. What was the purpose behind this change?

09:34AM

11 A. The purpose was to ensure better performance with the
12 performance measures for years three and four, and it was
13 effective on March 4th. The contract sanctions for performance
14 measures were changed from 43 performance measures quarterly at
15 a state-wide level to approximately 100 measures evaluated
16 monthly at each complex.

09:34AM

17 The sanction amount that Corizon agreed to was for
18 \$5,000 per performance measure, with a maximum on a monthly
19 basis to be sanctioned for \$90,000.

20 Q. And what was the purpose -- if this modification came about
21 shortly after or right around the time that the Parsons versus
22 Ryan stipulation -- strike that.

09:35AM

23 This modification changed the sanctions from 43
24 performance measures to 100 performance measures being
25 evaluated. Do you know why that was?

09:35AM

1 A. Well, I believe it moved them from 43 measures which were
2 being sanctioned on a quarterly basis to 100 measures being
3 performed or evaluated on a monthly basis, and frankly, I would
4 defer to Richard Pratt for further detailed explanation.

5 Q. Okay. That's fine.

09:35AM

6 And under Subsection 7 there was also additional
7 staffing added?

8 A. Yes. There are five positions listed there, and basically,
9 Corizon indicated that they needed those five positions and
10 that they would bear the cost and there would be no cost to the
11 State.

09:36AM

12 Q. And under Subsection 8 there's a little more detail with
13 respect to the CPI adjustment. Do you see that?

14 A. Yes, I do.

15 Q. And so this was something that was specified in the
16 original contract with respect to Corizon's ability to ask for
17 a CPI adjustment?

09:36AM

18 A. Yes.

19 Q. Now if you look at -- I'm sorry. Go back to page 201.1.

20 Under Subsection 4, you see that there's an
21 indemnification provision amending Amendment Number 10. Why
22 was that put in?

09:37AM

23 A. The indemnification language is inserted there so that if
24 there were any claims filed against the Department because of
25 shortcomings on the part of Corizon that the cost associated

09:37AM

1 with such as court costs or attorney fees would have to be
2 borne by Corizon and not the State of Arizona or the Department
3 of Corrections.

4 Q. And if you look at the Page 201.2, the second paragraph, it
5 looks like it specifically addresses Parsons versus Ryan. Do
6 you see that? 09:37AM

7 It's the second paragraph on the second page of
8 Exhibit 201.

9 A. Yes, I see that.

10 Q. And what was the thought process behind making Corizon
11 responsible for indemnifying the Department with respect to
12 shortcomings regarding providing health care under the Parsons
13 versus Ryan stipulation? 09:38AM

14 A. The Department -- excuse me. Corizon was the entity or
15 organization for the delivery of health care to the inmate
16 population. The Department's role was that of a monitor and a
17 monitoring bureau was overseeing Corizon in terms of its
18 accountability in the delivery of health care to the inmate
19 population. 09:38AM

20 Q. And was there any kind of thought process regarding
21 Corizon -- Corizon, I guess, skin in the game with respect to
22 providing health care that met the performance measures set
23 forth in the stipulation under Parsons versus Ryan? 09:39AM

24 A. Corizon was looking for, if you will, support for a CPI and
25 the Department was looking for performance in compliance with 09:39AM

1 the stipulated agreement, so, if you will, the skin in the game
2 was, for them, if you do not deliver and do not fulfill the
3 performance measures there will be a consequence through a
4 sanction process.

5 Q. So this was another form of sanction in addition to the
6 sanctions set forth in Section 6 of the contract?

09:39AM

7 A. Yes.

8 Q. Thank you.

9 Now, in June of 2017 the Court issued an order with
10 respect to these 11 performance measures at a few of the
11 facilities, having been substantially non-compliant, and
12 indicating that the Court may issue monetary sanctions.

09:40AM

13 Do you recall that? And this was in June of 2017?

14 A. Yes.

15 Q. Okay.

09:40AM

16 With respect to that, what efforts did you make, the
17 Department make, regarding trying to get Corizon to comply with
18 the stipulation?

19 A. We continue to meet with Corizon on a bi-weekly basis
20 demanding and insisting upon their performance. The
21 forewarning from the Court was quite clear in terms of having
22 to achieve 100 percent compliance 100 percent of the time with
23 those performance measures.

09:41AM

24 Q. Let me correct you. That didn't come about until October
25 10 of 2017.

09:41AM

1 A. That's correct.

2 Q. The order to show cause is why you are here today but in
3 June the Court indicated that it may issue monetary sanctions.

4 THE COURT: Excuse me. You're testifying.

5 MR. STRUCK: I'm sorry, Your Honor. I apologize. 09:41AM

6 THE COURT: Thank you.

7 BY MR. STRUCK:

8 Q. Why don't you refer to Exhibit 205.

9 A. Okay.

10 Q. And what is Exhibit 205? 09:42AM

11 A. It is Amendment Number 14 to the contract with Corizon.

12 It's dated September 6, 2017.

13 Q. And what was the purpose behind Amendment Number 14?

14 A. The purpose of this amendment was the result of
15 conversations with Corizon leadership to try and negotiate 09:42AM
16 better performance on the part of Corizon, and it not only made
17 available to Corizon the possibility of a compliance rate
18 incentive based on improved performance, it also had the
19 objective of eliminating the sanction cap which had been set at
20 \$90,000. 09:43AM

21 We initiated this and came to terms on this in
22 September of 2017 to encourage prompt, if you will, reward for
23 a relatively short period of time to the end of the contract
24 with Corizon to improve their performance.

25 So there was a combination of incentives based on 09:44AM

1 improved performance and then there were also increased
2 sanctions for not performing.

3 Q. You just testified that one of the things that the
4 Department was trying to do was to increase performance by
5 Corizon. Was there anything specifically or different things
6 that prompted this discussion with Corizon leadership to come
7 up with some sort of amendment that would help encourage
8 Corizon to do a better job performing under the contract?

09:44AM

09:44AM

09:45AM

09:46AM

09:46AM

9 A. Again, I would refer to the Court had been -- the Court had
10 forewarned months earlier that improved performance was
11 expected or there, in fact, might be sanctions imposed. So
12 when we sat down and negotiated with Corizon, basically, they
13 were making a proposal to receive some incentives and they were
14 accepting of the cap being removed if they did not perform,
15 frankly, what it proved to be -- turned out to be over several
16 months was improved performance on their part.

17 Q. And how do you know that they improved performance?

18 A. By looking at the CGAR summary that showed marked
19 improvement month after month.

20 When I look at the issue of documenting it and
21 tracking their performance and knowing that we had initially
22 entered into a stipulated agreement in October of 2014 and the
23 Court acknowledged that and accepted that in February of 2015,
24 we saw marked improvement in March of 2015 and they had
25 improved scores and they were finally able to start hitting the

1 mark of the 75, the 80, and the 85 percent. From a period of
2 time in 2015 to as recently as in January of 2018, their
3 performance had improved to the point of 94 percent.

4 MR. FATHI: Excuse me, Your Honor. We object and move
5 to strike on the grounds that the January data have not been
6 provided to us. 09:47AM

7 THE COURT: You will have the opportunity to
8 cross-examine.

9 BY MR. STRUCK:

10 Q. So between September 6, 2017 and January, this January,
11 have you -- has Corizon improved their performance with respect
12 to meeting the performance measures on the stipulation? 09:47AM

13 A. Yes, they have.

14 Q. And you say in January it was 94 percent of --

15 THE COURT: Mr. Struck, I have reconsidered my ruling. 09:47AM
16 It's not fair for you to ask about January when the plaintiffs
17 don't know what January is, so I will sustain the objection. I
18 kind of had assumed maybe overnight you would be providing
19 those January numbers to the plaintiff.

20 MR. STRUCK: We don't have that, Your Honor. 09:48AM

21 THE COURT: You don't have them and you are asking
22 about them.

23 MR. STRUCK: There's preliminary numbers.

24 THE COURT: That 's not fair. Let's not do that.

25 Thank you. 09:48AM

1 MR. STRUCK: All right.

2 BY MR. STRUCK:

3 Q. In December, do you know what Corizon's performance was
4 with respect to the total number of performance measures that
5 are measured at the facilities that Corizon provides health
6 care at? 09:48AM

7 A. The December 2017 percentages were almost 93 percent
8 compliant.

9 Q. Okay. Thank you.

10 Now, did you have any -- was the hope -- one of the 09:48AM
11 hopes with respect to Amendment 14 have anything to do with the
12 11 performance measures that the Court was concerned about and
13 had issued a warning a few months earlier?

14 In other words, was the hope that Corizon would get
15 serious and comply with those, meet the 85 percent threshold on 09:49AM
16 those particular performance measures at the facilities that
17 were affected?

18 MR. FATHI: Objection, Your Honor. Amendment Number
19 14 is more than one month earlier than the Court's October 10th
20 order that set forth the 11 specific performance measures. 09:49AM

21 MR. STRUCK: I'm sorry, Your Honor. I was referring
22 to your June order.

23 THE COURT: I see. All right. Overruled.

24 THE WITNESS: Would you please repeat your question?

25 BY MR. STRUCK: 09:49AM

1 Q. Certainly.

2 Was part of the thought process behind Amendment
3 Number 14, did it have anything to do with the Court's concerns
4 back in June with respect to those 11 performance measures that
5 we're here about today, getting Corizon to --

09:50AM

6 A. Yes, it did. We were wanting them to improve the
7 performance relative to all the measures that had been
8 identified as either non-compliant and or deficient.

9 Q. Now, this Amendment Number 14 in Exhibit 205 caps the
10 incentives at \$3.5 million. It's on Page 2 of Subsection 6.

09:50AM

11 Do you see that?

12 A. Yes, I do.

13 Q. Where did you find that money?

14 A. The \$3.5 million came from within the Department's budget
15 by identifying either from the contingency and/or we identified
16 some of the funds from vacancy savings.

09:51AM

17 Q. And the vacancy savings that you have previously testified,
18 that was some of the money that you were using to try and
19 incentivize to keep corrections officers from leaving?

20 A. Yes.

09:51AM

21 Q. So essentially you were taking that money to incentivize
22 Corizon to perform under the stipulation?

23 A. We were trying to utilize the funds within the Department's
24 appropriation to pay for -- to identify and pay for that
25 incentive.

09:52AM

1 Q. On October 10 of 2017, this Court issued an order to show
2 cause with respect to those 11 performance measures at the four
3 facilities that are affected. Were you aware of that?

4 A. Yes.

5 Q. And when did you find out about it?

09:52AM

6 A. Very shortly after the Court entered its order.

7 Q. And what did you do about that order?

8 A. We sat down with Corizon and had a very frank conversation

9 with them in terms of that requirement. Specifically, we sat

10 down with the Arizona senior VP, Roland Maldonado, and advised

09:52AM

11 him this was the expectation and requirement of the Court and

12 Corizon had to fulfill that to the letter. We had what I

13 thought was a very productive conversation and meeting in my

14 office with Richard Pratt and some other staff, Mr. Maldonado

15 and his deputy, in terms of, if you will, a real-time tracking

09:53AM

16 requirement as far as they pertain to those 11 performance

17 measures. Mr. Maldonado indicated and was very cooperative

18 about wanting to do that and said that he would be able to

19 implement that real-time tracking instrument, I think he said,

20 by October 23rd. So we concluded our business and anticipated

09:54AM

21 that we would be moving forward so that, if you will, the

22 real-time tracking and reporting would be able to be fulfilled.

23 Q. Why don't you take a look at Exhibit 31.

24 A. Yes.

25 Q. Have it?

09:55AM

1 A. I do.

2 Q. What is Exhibit 31?

3 A. Exhibit 31 is an October 25, 2017 letter that is
4 co-authored by myself and Richard Pratt and it is addressed to
5 the Corizon leadership. It is a letter that explained to them
6 clearly, as you know, on October 10th, United States District
7 Court Magistrate Judge David Duncan issued an order requiring
8 defendants in the Parsons case to comply with the following
9 performance measures or face sanctions pursuant to the Court's
10 civil contempt authority. The 11 performance measures are
11 listed.

09:55AM

09:55AM

12 Then when I refer to Page 2 of that exhibit, the next
13 to last paragraph on the page, the Court found that these
14 performance measures at these prisons to be substantially
15 non-compliant with the stipulation almost one year ago and they
16 are still non-compliant. Corizon's failure to substantially
17 comply with these measures now has exposed Mr. Pratt and I to
18 civil contempt sanctions and we demand that Corizon take all
19 reasonable steps to substantially comply with these measures in
20 the Court's order, included, but not limited to, flying Corizon
21 health care personnel from other states to fill vacant
22 positions.

09:56AM

09:56AM

23 It goes on in implementing the daily real-time
24 monitoring data program advocated by Corizon Senior
25 Vice-President of Operations Roland Maldonado at our meeting on

09:56AM

1 October 19th. In the course of doing so Corizon also must
2 immediately ensure that not only these measure thresholds are
3 met but that each and every inmate who is affected by these
4 performance measures at the subject prisons receive the medical
5 care that Corizon is contractually obligated to provide.

09:57AM

6 And it goes on.

7 With or without your knowledge and consent,
8 Mr. Maldonado personally advocated for the immediate
9 implementation of a daily real-time monitoring data program.
10 At our meeting last week he specifically included in his
11 written agenda a, quote, patient care slash CGAR improvement
12 plan with a description of a daily tracker and installation
13 plan of recommended sample forms stating daily tracking
14 starting October 23rd.

09:57AM

15 We reached an agreement with Mr. Maldonado at the
16 meeting and understood that Corizon's daily real-time reporting
17 would begin as promised on October 23rd. However, the very
18 next day after the meeting, after apparently discussing his
19 representations with you, referring to, I believe, Mr.

09:57AM

20 Goldberg, Mr. Maldonado informed us on October 20, 2017 that
21 Corizon will not implement any daily real-time monitoring data
22 program.

09:58AM

23 This is unacceptable and contrary to a multitude of
24 promises and other representations that Corizon has made to ADC
25 and the State of Arizona over many years.

09:58AM

1 Q. Okay.

2 And then on the next page, I think it talks about some
3 of the representations that have been made by Corizon officials
4 to you folks over the years. Ultimately, what was your
5 expectation and demand when sending this letter?

09:58AM

6 A. That they comply as had been stated and promised by Roland
7 Maldonado, and the last paragraph on the last page so states to
8 be clear: We demand that Corizon immediately take all
9 reasonable steps to comply with the subject performance
10 measures, and the letter constitutes our formal demand for full
11 indemnification pursuant to this contract agreement.

09:59AM

12 Q. Did you do anything besides send a letter to try and get
13 Corizon to comply with respect to the October 10th, 2017 order
14 from this Court?

15 A. We continued to meet with Corizon and reminded them of
16 their contractual obligations to perform, and we thought that
17 they understood that, meaning specifically Mr. Maldonado. It
18 was followed a few days later by a letter from Mr. Goldberg,
19 which is another exhibit.

09:59AM

20 Q. Why don't you take a look at Exhibit 33.

10:00AM

21 A. I have it.

22 Q. Is that the letter that you are referring to?

23 A. Yes, it is.

24 Q. And it appears -- and this is in evidence, Your Honor.

25 At the bottom of the page it appears Mr. Goldberg is

10:00AM

1 backing off on Mr. Maldonado's promise for real-time reporting.

2 Is that the gist of this letter?

3 A. Yes, it was the gist of the letter, that he was indicating
4 that Corizon would not be providing what Mr. Maldonado had
5 committed to previously.

10:01AM

6 Q. And it looks like he's explaining that there is some sort
7 of misunderstanding as to what Mr. Maldonado was promising to
8 deliver, if you look at the top of Page 2.

9 MR. FATHI: Objection, Your Honor. Leading.

10 THE COURT: Sustained.

10:01AM

11 BY MR. STRUCK:

12 Q. Look at the top of Page 2, please.

13 THE COURT: I'm sorry?

14 MR. STRUCK: I'm referring the witness to the top of
15 Page 2.

10:01AM

16 THE COURT: That's simply what you did. You weren't
17 suggesting the answer?

18 MR. STRUCK: No. It's in the top --

19 THE COURT: It looks like he's explaining that there
20 is some sort of misunderstanding as to what Mr. Maldonado is
21 promising to deliver if you look at the top of Page 2. That
22 looks to me like a leading question.

10:02AM

23 MR. STRUCK: After you sustained the objection I asked
24 the witness to take a look at the top of Page 2.

25 THE COURT: Yes.

10:02AM

1 Then, Mr. Fathi, the record doesn't reflect what your
2 further statement was. You said no, it was in --

3 MR. FATHI: I made no further statement after the
4 objection.

5 THE COURT: Let's re-try, then. 10:02AM

6 MR. STRUCK: I'm sorry. I understood your ruling and
7 I'm trying to move on --

8 THE COURT: I'm sorry.

9 MR. STRUCK: -- and have the Director testify about
10 what's on the top of Page 2. 10:02AM

11 BY MR. STRUCK:

12 Q. If you refer to the top of Page 2, what is it that -- I
13 guess Mr. Goldman, who is the Chairman of the Board of
14 Directors, what is he stating here with respect to
15 Mr. Maldonado's promise to deliver a real-time tracking
16 system? 10:02AM

17 A. He goes on to say, "I believe Rolly promptly corrected this
18 misunderstanding in a phone call to you the day after your
19 letter. To avoid further confusion, we refer to this program
20 as, quote, 'Rolly's real-time system improvement tracking,'"
21 unquote. 10:03AM

22 Needless to say, as I read the rest of this letter
23 there's emphasis being given on the part of Mr. Goldberg that
24 clearly tells me that they would not comply with this
25 requirement, and he emphasized we might, as a last resort, 10:03AM

1 consider altering Rolly's real-time system improvement tracking
2 to serve this purpose.

3 So we were not accepting of this letter because
4 clearly it was conveying resistance and great reluctance on the
5 part of Corizon, and we followed up this letter with another
6 one a couple of days later.

10:04AM

7 Q. Take a look at Exhibit 34.

8 This is in evidence as Defendants' Exhibit 34.

9 Can you tell us what Exhibit 34 is?

10 A. Exhibit 34 is a letter dated November the 8th to
11 Mr. Goldberg and others indicating that we were in receipt of
12 his November 6th letter confirming Corizon's refusal to
13 immediately implement a manual system for real-time reporting
14 of the failing performance measures subject to the October
15 10th, 2017 Court order. We went on to make it very, very
16 clear, we believe, and this is a letter co-authored by myself
17 and Richard Pratt, in terms of what our expectation was.

10:04AM

10:05AM

18 Q. Why were you sending it to the operating committee of the
19 Board of Directors? Why not the CEO?

20 A. I believe Mr. Goldberg at the time was, if you will,
21 double-hatted. He was not only the chairman. I think he was
22 the interim CEO as well. Corizon has gone through a number of
23 CEOs and they had not yet appointed another permanent CEO so I
24 think Mr. Goldberg was serving a dual function.

10:05AM

25 Q. And besides demanding the real-time reporting in the second

10:06AM

1 paragraph here, what else are you asking Corizon to do?

2 A. As we had done previously on multiple occasions, given the
3 vacant staffing positions which had been moving around the 10
4 percent vacancy for a number of months, we wanted Corizon to
5 fly in from whatever contracts they had elsewhere in the United
6 States personnel and providers to fill that void. 10:07AM

7 Q. And were you demanding that?

8 A. Yes, we were.

9 Q. How many days after the letter from Mr. Goldberg did you
10 send this letter? 10:07AM

11 A. Mr. Golberg's letter of November 6th was followed by this
12 letter from us on November the 8th.

13 Q. Since November 8th, has Corizon got a CEO put in place?

14 A. Yes. CEO No. 7 is Steve Rector, and we have found him to
15 be much more responsive. He has given direction relative to
16 the performance measures that -- particularly those the Court
17 is requiring to be 100 percent. He has given direction to the
18 Corizon leadership and certainly the senior VP here in Arizona
19 to be as responsive as possible to try and fulfill those
20 measures. 10:08AM

21 I have conversations with this CEO almost on a weekly
22 basis in addition to the bi-weekly meetings with the Arizona
23 VP, Mr. Maldonado, and his team.

24 We have also had further meetings with the Corizon
25 team, to include the FHAs, the DONs, Mr. Pratt's monitoring 10:09AM

1 team, the wardens, and the deputy wardens, to emphasize the
2 significance of the Court's order and the expectation of
3 ensuring the performance measures are being achieved. We have
4 seen marked improvement in the communication and the approach
5 to problem-solving relative to those performance measures.

10:10AM

6 They are not perfect but they have made significant strides,
7 and as recently as the December of 2017 have all but achieved
8 93 percent compliance with the CGARs.

9 Q. Have you met personally with Mr. Dichter (sic), the CEO?

10 A. Mr. Rector. I certainly have. I have met with him I
11 believe three to four times face to face. The first meeting I
12 encountered him actually was an introduction to each other at
13 the American Corrections Association and Directors Conference
14 at the mid winter in January in Florida, and our first
15 one-on-one conversation we specifically discussed the Court's
16 order of October the 10th.

10:10AM

10:11AM

17 Q. In subsequent discussions you have had with him have you
18 talked about this order?

19 A. Absolutely. Certainly have. And it's a topic that is
20 discussed on a weekly basis. It's the same topic that I have
21 every other week with Mr. Maldonado and his staff and two
22 topics that are always discussed without exception are
23 performance measures and staffing.

10:11AM

24 Q. Show you what's been marked as Defense Exhibit 37. You
25 should have that in front of you.

10:12AM

1 And what is this?

2 A. Exhibit 37 is a January 10th, 2018 letter addressed to
3 Mr. Maldonado co-signed by myself and Richard Pratt. It is
4 reference: Performance. And it states, "As previously
5 discussed on October the 10th, United States Court Magistrate
6 Judge David Duncan issued an order requiring defendants in the
7 Parsons case to comply with the following performance measures
8 or face sanctions pursuant to the Court's civil contempt
9 authority."

10:13AM

10:13AM

10 It goes on to list the 11 measures subject to the
11 order as follows.

12 And on the bottom of Page 2, in order to follow the
13 compliance of these measures Corizon developed a daily tracking
14 system to determine which measures were not in compliance. The
15 initial results based upon reporting for the calendar month of
16 December 2017 are as follows, and then there's a listing of
17 those measures, and it indicates a grand total of 2,481, which
18 I believe refers to incidents.

10:13AM

19 "To be clear, and as you well know, the Court has
20 demanded 100 percent compliance with these measures at the
21 listed facilities. Anything short of 100 percent will be
22 considered by Magistrate Judge Duncan as eligible for
23 imposition of a \$1,000 sanction. Figures above represent a
24 potential sanction of \$2.4 million.

10:14AM

25 "As we and ADC previously notified Corizon, if the

10:14AM

1 Court ultimately imposes sanctions against us Corizon will be
2 contractually responsible for comprehensive indemnification
3 pursuant to Paragraph 4 of Contract Amendment Number 10."

4 Q. Do you know, Director, do you have personal knowledge as to
5 whether or not Corizon has been able -- actually been able to
6 develop a real-time tracker for all of these performance
7 measures?

10:14AM

8 A. I don't know with specific detail if they have fully
9 achieved that. I think they have with some. I would defer to
10 Richard Pratt.

10:15AM

11 Q. Do you know where this 2481 number came from?

12 A. I believe the number was identified and self-reported by
13 Corizon and verified by Richard Pratt and his staff.

14 Q. And if you wouldn't mind taking a look at Exhibit 39,
15 defendants' Exhibit 39.

10:15AM

16 And what is Exhibit 39?

17 A. It is a February 7, 2018 letter addressed to Roland
18 Maldonado reference performance. It is a co-signed letter from
19 myself and Richard Pratt and I believe it is a clarification
20 letter to our letter dated January 10 regarding performance
21 measures on review by the Court.

10:16AM

22 Q. Okay. And if you turn to Page 3, it looks like there's
23 some numbers there.

24 A. And then states that number has now been recalculated
25 consistent with the Court's order as follows, and it lists the

10:16AM

1 performance measures and the grand total is 668.

2 Q. Do you know why there was a -- do you have personal
3 knowledge as to why there was a difference between the January
4 10 letter and this February 7 letter, the difference in the
5 numbers?

10:17AM

6 A. Personally, I do not. I would defer to Richard Pratt.

7 Q. And the purpose of this letter was to?

8 A. To provide clarification.

9 Q. And that clarification being the number?

10 A. Yes.

10:17AM

11 Q. Now, you have testified already about the letters that you
12 sent Corizon and meeting with the CEO in these bi-weekly
13 meetings. Are you personally involved in these bi-weekly
14 meetings with the Corizon?

15 A. Most of the time, yes.

10:17AM

16 Q. How many -- what percentage of the meetings since October
17 have you been personally involved do you think?

18 A. Probably 95 percent of them.

19 Q. And is the October 10th order, is that a topic of
20 conversation at all of these meetings?

10:18AM

21 A. Yes, it is.

22 Q. And what is your expectation with respect to the October
23 10th order?

24 A. Compliance.

25 Q. Now, one of the things that you have mentioned earlier in

10:18AM

1 the order referred to 100 percent compliance. Is that
2 something that was in the stipulation?

3 MR. FATHI: Objection, Your Honor. Calls for a legal
4 conclusion.

5 THE COURT: It's a subject of significant legal issue 10:18AM
6 in this case that's pending before the Court of Appeals
7 presently so I don't understand how a record developed here
8 with Mr. Ryan is of any use with respect to the OSC. I have my
9 view as to what is going to be until I get further instruction
10 from the Court of Appeals that would cause me to do something 10:19AM
11 differently. What Director Ryan would say would have no effect
12 on that because I have already made that legal decision. You
13 have already challenged it. So I don't see how this is useful
14 of your time.

15 MR. STRUCK: If I may ask another question? 10:19AM

16 THE COURT: Surely.

17 BY MR. STRUCK:

18 Q. With respect to the stipulation, were you involved in the
19 negotiation of the stipulation?

20 A. Yes, I was. 10:19AM

21 Q. And what was your understanding when you negotiated a
22 stipulation with respect to the level of the performance
23 measures that needed to be met in order to comply?

24 MR. FATHI: Objection, Your Honor. One party's
25 post-hoc statement about what his intention was is absolutely 10:19AM

1 irrelevant.

2 THE COURT: Sustained. Water under the bridge.

3 MR. STRUCK: Let me ask one more question.

4 THE COURT: You may.

5 BY MR. STRUCK:

10:19AM

6 Q. If, in fact, the stipulation had -- if one of the
7 provisions of the stipulation required 100 percent performance
8 with a performance measure, would you have entered into that
9 stipulation?

10 MR. FATHI: Objection, Your Honor.

10:20AM

11 THE COURT: Sustained. The objection is sustained.

12 It's the same question.

13 MR. STRUCK: May I submit an offer of proof, Your
14 Honor, through the question?

15 THE COURT: Again, I don't see the utility of that.

10:20AM

16 The issue is presently before the Court of Appeals and you will
17 have to ask them to reopen the record, not me.

18 MR. STRUCK: All right.

19 THE COURT: Mr. Struck, is this a good time to take
20 the morning break?

10:20AM

21 Mr. Pratt, we take a break in the morning mostly for
22 the court reporter. She works every second. We're like cross
23 country skiers. We can kick and glide. She's doing something
24 every single moment.

25 We'll come back in 15 minutes.

10:21AM

1 MR. STRUCK: It is Director Ryan.

2 THE COURT: Did I say Mr. Ryan?

3 MR. STRUCK: You said Director Pratt.

4 THE COURT: We're both imperfect. We know that. So
5 stipulated. Thank you, sir. 10:21AM

6 (Recess from 10:21 a.m. to 10:40 a.m.)

7 MR. STRUCK: Before I resume I wanted to alert the
8 Court that we did receive the January numbers this morning and
9 they have been filed. I have informed plaintiffs' counsel.

10 THE COURT: But they haven't had a chance to look at 10:40AM
11 them, obviously.

12 MR. STRUCK: I'm sure they have not.

13 THE COURT: Thank you.

14 MR. STRUCK: All right.

15 BY MR. STRUCK: 10:40AM

16 Q. Director, I wanted to ask you specifically about
17 Performance Measure 35. Did the Department have involvement in
18 coming up with some sort of a plan to assist in reaching
19 compliance for Performance Measure 35?

20 A. Yes, the Department did. PM 35 relevant to the transfer of 10:41AM
21 medications with the inmate when moving from one location to
22 another involves an operational activity between prison
23 operations, personnel, and health care staff as well. So there
24 has to be good collaboration and communication, advance
25 notification relative to the relocation of that offender. 10:41AM

1 We transfer hundreds of inmates throughout the state
2 each week to various locations so it is imperative that there
3 be good coordination. Myself, Richard Pratt, Roland Maldonado,
4 Carson McWilliams, the regional directors, the wardens, the
5 FHAs, the DONs, several months ago collaborated and had a
6 state-wide meeting relative to the development and planning and
7 collaboration of this process. The minute details of that
8 process I would defer to Carson McWilliams and Richard Pratt to
9 explain that, but it was essential that this operational
10 activity be well-coordinated between the Department and
11 Corizon.

10:42AM

10:43AM

12 Q. And was that something that you directed?

13 A. I facilitated it and was party to that, certainly the
14 initial, and then subsequently signed the Director's
15 instruction after it was fully developed.

10:43AM

16 Q. I just want to go over one more time and make sure. You
17 have testified with respect to the measures that you took
18 regarding the Court's requirement and the stipulation's
19 requirement that the Department comply and ensure that its
20 third-party health care provider comply with the 11 performance
21 measures that are at issue here today.

10:43AM

22 You have testified about the letters that were sent.
23 Just so I'm not restating what your testimony is, could you
24 just go ahead and testify with respect to the other things that
25 you did?

10:44AM

1 A. We have met with Corizon on a bi-weekly basis. I have
2 conferred with the CEO on a regular and/or weekly basis. I
3 have met with Richard Pratt on a weekly basis.

4 And oftentimes, more often, certainly, I meet with,
5 have met with Carson McWilliams, the RODs, we conduct wardens' 10:44AM
6 meetings. This is a topic of discussion on a regular basis and
7 we take a problem-solving approach relative to what is expected
8 in attendance at those wardens' meetings. They are required to
9 meet on a daily basis with the health administrator from that
10 respective prison complex to problem solve. 10:45AM

11 And they conduct those meetings operationally in the
12 afternoon of each day. They had been conducting them much
13 earlier in the day, the morning, and it made a lot more sense
14 operationally to be conducting those sessions in the afternoon
15 so that they understood what had occurred or what had not 10:45AM
16 occurred during the day. That was a requirement relative to
17 the measures and I think that's greatly improved the approach
18 that's being taken. And again, I would defer to either Richard
19 Pratt or Carson, who can testify in certainly much greater
20 detail. 10:46AM

21 Q. Has it just been since June of 2017 when the Court
22 indicated that financial sanctions might be forthcoming that
23 you have been pushing Corizon with respect to complying with
24 this contract?

25 A. No, it has not been just since June. I have been heavily 10:46AM

1 involved as the Director since the inception of privatized
2 health care over the last all but 10 years, and the delivery of
3 health care is an incredibly important function to the inmate
4 population and I pay attention and have paid attention for the
5 delivery of health care certainly throughout my career, but 10:47AM
6 most certainly since I returned almost 10 years ago as the
7 Director.

8 Q. On October 10 the court ordered, "If the Court finds clear
9 and convincing evidence that the defendants have failed to take
10 all reasonable steps to comply with this order, the Court shall 10:47AM
11 impose civil contempt sanctions on defendants."

12 You have read that order, haven't you?

13 A. Yes, I have.

14 Q. And you understood what the Court meant?

15 A. Yes, I do and I did. 10:47AM

16 Q. Do you believe that you took all reasonable steps to comply
17 with the Court's order?

18 A. Yes, I do.

19 Q. Thank you.

20 THE COURT: Thank you. 10:47AM

21 Any cross-examination?

22 MR. FATHI: Yes, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. FATHI:

25 Q. Good morning, Director Ryan. 10:48AM

1 A. Good morning.

2 Q. Now, you were the legal custodian of all persons who were
3 incarcerated in ADC, correct?

4 A. Yes.

5 Q. And you have a constitutional obligation to provide
6 adequate medical and mental health care to those in your
7 custody who need it, correct?

10:48AM

8 A. Yes.

9 Q. And this lawsuit involves, among other things, the
10 provision of medical and mental health care in Arizona prisons,
11 correct?

10:48AM

12 A. I'm sorry. I --

13 Q. This lawsuit involves the provision of medical and mental
14 health care in Arizona prisons?

15 A. Yes.

10:48AM

16 Q. And the name of this lawsuit is Parsons versus Ryan?

17 A. And Pratt.

18 Q. Fair enough.

19 And you are the Ryan in Parson versus Ryan and Pratt,
20 correct?

10:49AM

21 A. Yes.

22 Q. Now when this case settled in October of 2014 you put your
23 signature on the settlement agreement, which we also call the
24 stipulation, didn't you?

25 A. Yes.

10:49AM

1 Q. And obviously, when you did that you knew that health care
2 was being provided by a third party private corporation, right?

3 A. Yes.

4 Q. And by signing the stipulation, you promised to comply with
5 its requirements, including all of the performance measures
6 that are part of the stipulation?

10:49AM

7 A. Yes.

8 Q. And that's a promise you take seriously, isn't it?

9 A. Yes.

10 Q. Now, you know that we have regular hearings here in court
11 in this case, correct?

10:49AM

12 A. Yes.

13 Q. We have a standing monthly hearing and some months, like
14 this month, we have more than one hearing in a month?

15 A. Yes.

10:49AM

16 Q. And you are notified in advance of when these hearings are
17 going to take place?

18 A. Yes.

19 Q. But before today, since the stipulation was approved in
20 February of 2015, you have only come to court once.

10:50AM

21 MR. STRUCK: Objection, Your Honor. Relevance.

22 THE COURT: What's the objection?

23 MR. STRUCK: Relevance.

24 THE COURT: Overruled.

25 THE WITNESS: Repeat your question.

10:50AM

1 BY MR. FATHI:

2 Q. Before today, since the stipulation was approved by Judge
3 Duncan in February of 2015, you have only come to court once?

4 A. Yes.

5 Q. And that was last August when Judge Duncan ordered you to
6 appear?

10:50AM

7 A. Yes.

8 Q. Do you rely on Mr. Pratt to make sure that ADC is in
9 compliance with the stipulation?

10 A. Yes, I do.

10:50AM

11 Q. Is he the person with primary responsibility for ensuring
12 compliance?

13 A. He is, and he shares in that responsibility to some extent
14 with Carson McWilliams.

15 Q. But talking about the health care provision to the
16 stipulation, is it fair to say that Mr. Pratt is the person
17 with primary responsibility for ensuring compliance with those
18 provisions?

10:51AM

19 A. Yes.

20 Q. That's his job?

10:51AM

21 A. Yes.

22 Q. Now, we talked about a state law that requires ADC to
23 contract with a private company to provide health care services
24 to people in your custody.

25 A. Yes.

10:51AM

1 Q. And the current contract is with Corizon Health.

2 A. Yes.

3 Q. And the Corizon contract took effect in March of 2013.

4 A. Yes.

5 Q. And the original contract was for a period of three years
6 from March 2013 to March 2016.

10:51AM

7 A. Yes.

8 Q. And the number of FTEs in Corizon's original staffing
9 pattern when it first assumed the contract was actually smaller
10 than the number of FTEs when the State provided health care,
11 correct?

10:52AM

12 A. I don't recall specifically.

13 Q. You don't know.

14 A. I would defer to Mr. Pratt. I do not recall specifically.

15 Q. Would you look at Exhibit, 201 please.

10:52AM

16 This is a document that you discussed earlier dated
17 May 11, 2015 entitled Amendment Number 10, correct?

18 A. Yes.

19 Q. And you are familiar with this document?

20 A. Yes.

10:52AM

21 Q. And by this document you extended the original three-year
22 contract with Corizon for an additional year to March of 2017,
23 correct?

24 A. Yes. The statutory provision that had been passed by the
25 legislature made available a three-year contract and the

10:53AM

1 potential of two one-year extensions.

2 Q. So the contract was extended for an additional year to
3 2017.

4 A. Yes.

5 Q. As of the date of this renewal, May 11, 2015 were you
6 satisfied with Corizon's performance in providing health care
7 to ADC prisoners?

10:53AM

8 A. Not completely.

9 Q. Would you please turn to Page 3 of Exhibit 201.

10 In paragraph 8 you gave Corizon a raise from 11.20 to
11 11.60 per prisoner per day, correct?

10:53AM

12 A. It was a CPI adjustment from \$11.20 to \$11.60.

13 Q. So Corizon formerly got \$11.20. By this amendment they got
14 \$11.60.

15 A. Yes.

10:54AM

16 Q. And that was at an annual fiscal impact of \$5.2 million.

17 A. Yes.

18 Q. And this increase was retroactive to March 4, 2015,
19 correct?

20 A. Yes.

10:54AM

21 Q. Would you turn to paragraph -- Page 2, the final paragraph
22 above Section 5 titled Mediation.

23 This is the indemnification provision that you
24 discussed earlier, correct?

25 MR. STRUCK: I'm sorry, Your Honor. It's actually --

10:55AM

1 the indemnification is on Page 1 of the document, Paragraph 4.

2 MR. FATHI: I'm sorry. It begins on Page 1. It
3 continues on to Page 2.

4 BY MR. FATHI:

5 Q. Director Ryan, please take your time. Let me know when you 10:55AM
6 are ready to answer questions about that.

7 A. I have read it.

8 Q. Pursuant to this provision, is Corizon indemnifying ADC for
9 the money ADC pays to Mr. Struck's law firm in this case?

10 A. Yes. 10:56AM

11 Q. For 100 percent of that money?

12 A. Yes.

13 Q. How much is Corizon indemnified so far for Mr. Struck's law
14 firm?

15 MR. STRUCK: Foundation, Your Honor, and relevance. 10:56AM

16 THE COURT: Foundation objection is sustained.

17 Relevance is overruled.

18 BY MR. FATHI:

19 Q. Director Ryan, do you know approximately how much Corizon
20 has reimbursed ADC for the payments that ADC has made to 10:56AM
21 Mr. Struck's law firm?

22 A. Not off the top of my head, no.

23 Q. You have no idea?

24 A. I'm sure it's considerable. But I do not have a specific
25 number. 10:56AM

1 Q. Pursuant to this provision, does Corizon indemnify ADC for
2 the payments that ADC makes to plaintiffs' counsel for
3 attorney's fees?

4 MR. STRUCK: Foundation, Your Honor.

5 THE COURT: The foundation objection is sustained. 10:56AM

6 BY MR. FATHI:

7 Q. Director Ryan, do you know if -- under the stipulation, ADC
8 pays plaintiffs' counsel in this case up to \$250,000 per year
9 for monitoring, correct?

10 A. Yes. 10:57AM

11 Q. And the stipulation also provides that under certain
12 circumstances the Court can award plaintiffs' counsel
13 additional attorney's fees, correct?

14 A. I believe so.

15 Q. So my first question is, does Corizon reimburse ADC for the 10:57AM
16 up to \$250,000 per year ADC pays to plaintiffs' counsel?

17 MR. STRUCK: Foundation.

18 THE COURT: Overruled.

19 THE WITNESS: Ask your question again.

20 BY MR. FATHI: 10:57AM

21 Q. Does Corizon reimburse ADC for the \$250,000 a year that ADC
22 pays to plaintiffs' counsel under the stipulation?

23 A. I think so.

24 Q. And is that 100 percent or some lesser percentage?

25 MR. STRUCK: Foundation, Your Honor. 10:58AM

1 THE COURT: Overruled.

2 THE WITNESS: I think so.

3 BY MR. FATHI:

4 Q. You think it's 100 percent?

5 A. I think it's 100 percent. 10:58AM

6 Q. And if the Court were to award plaintiffs' counsel
7 additional attorney's fees under the stipulation in addition to
8 that \$250,000 a year, does Corizon reimburse ADC for that
9 amount?

10 MR. STRUCK: Foundation. 10:58AM

11 THE COURT: The foundation objection is overruled.

12 MR. STRUCK: And relevance.

13 THE COURT: The relevance objection is overruled.

14 MR. STRUCK: Also speculation, Your Honor.

15 THE COURT: Sustained. 10:58AM

16 BY MR. FATHI:

17 Q. Director Ryan, you are aware that there's currently an
18 application for attorney's fees for plaintiffs' counsel pending
19 before this Court?

20 A. I'm assuming so. 10:58AM

21 Q. Have you had any discussions with Corizon about who is
22 going to pay that money if the Court grants that application
23 for attorney's fees?

24 A. No, I haven't.

25 Q. Still with Exhibit 201, would you please look at Paragraph 10:59AM

1 6 on Page 3 titled Contract Sanctions?

2 Are you there?

3 A. Yes.

4 Q. So this paragraph provides for sanctions to be imposed on
5 Corizon for failure to comply with performance measures under
6 the stipulation?

10:59AM

7 A. Yes.

8 Q. Would you please read aloud the -- on the fifth line the
9 sentence that begins, "The sanctions are assessed as follows."

10 A. "The sanctions are assessed as follows: For each
11 performance measure at each complex beginning the month of
12 March, 2016, if Corizon's lack of performance results in an
13 extension of the original time frame specified in the Parsons
14 v. Ryan et al. stipulation, Corizon will be assessed \$5,000
15 for" --

10:59AM

11:00AM

16 Q. That's fine. Thank you.

17 I think you testified that this amendment was entered
18 into shortly after the stipulation went into effect. Did I
19 hear that right?

20 A. I believe I testified to that.

11:00AM

21 Q. Okay. But this amendment actually goes into effect or this
22 sanctions provision goes into effect March of 2016, which is
23 more than a year after the stipulation went into effect,
24 correct?

25 A. Yes.

11:00AM

1 Q. Now, prior to Amendment 10 there have been no cap on the
2 sanctions that were payable by Corizon for non-compliance.

3 A. I think that's correct.

4 Q. Now, under Amendment 10, if Corizon was noncompliant on
5 three performance measures at six complexes, for a total of 18
6 instances of non-compliance that would result in a sanction of
7 \$90,000, correct?

11:01AM

8 A. Yes.

9 Q. So once Corizon had incurred \$90,000 in sanctions for 18
10 instances of non-compliance in a single month, there would be
11 no additional sanction for that month even if it was
12 non-compliant on all performance measures at all facilities,
13 correct?

11:01AM

14 A. Correct.

15 Q. The sanction would be the same.

11:01AM

16 A. Correct.

17 Q. And that \$90,000 monthly cap on sanctions remained in force
18 until the compliance results for November of 2017, which were
19 reported in January of this year, correct?

20 A. Yes.

11:01AM

21 Q. Now, Mr. Pratt told us yesterday that you made the final
22 decision to agree to this \$90,000 cap. Is that correct?

23 A. Yes.

24 Q. Why did you agree to a cap on sanctions of \$90,000 per
25 month?

11:02AM

1 A. It was a negotiation with the vendor.

2 Q. Now, we saw a moment ago at the bottom of Page 3 of Exhibit
3 201 that at the time you agreed to the \$90,000 cap Corizon was
4 getting paid \$11.60 per day per prisoner, correct?

5 A. Yes. 11:02AM

6 Q. And just a little further down the page from that it refers
7 to a state average daily population of 35,159. Do you see
8 that?

9 A. Yes.

10 Q. I will represent to you that 35,159 times \$11.60 equals 11:02AM
11 \$407,854. Does that sound about right?

12 A. Yes.

13 Q. I have a calculator. Would you like to check?

14 A. I will accept that.

15 Q. All right. 11:03AM

16 So from its contract with ADC Corizon was at this time
17 grossing more than \$407,000 every single day.

18 A. Okay.

19 Q. Correct?

20 A. Correct. 11:03AM

21 Q. So \$90,000 is less than one-quarter of what Corizon was
22 making from the contract in a single day.

23 A. Yes.

24 Q. In light of that figure, did you think that capping
25 sanctions at a maximum of \$90,000 per month was a smart 11:03AM

1 business decision?

2 MR. STRUCK: Objection, Your Honor. Relevance.

3 THE COURT: Overruled.

4 THE WITNESS: Yes, I do.

5 BY MR. FATHI:

11:03AM

6 Q. Did you think that a monthly sanction of less than
7 one-quarter of what Corizon makes in a single day was likely to
8 have a significant effect on Corizon's behavior?

9 MR. STRUCK: Objection, Your Honor. Foundation. He's
10 talking about what they make but he's talking about gross
11 income. It's not what they make.

11:04AM

12 MR. FATHI: I'm happy to rephrase the question.

13 THE COURT: Rephrase the question.

14 BY MR. FATHI:

15 Q. Did you think that a monthly sanction of less than
16 one-quarter of what Corizon grosses in a single day was likely
17 to have a significant effect on Corizon's behavior?

11:04AM

18 A. What was the second part of your question? Significant
19 what.

20 Q. A significant effect on Corizon's behavior.

11:04AM

21 A. It was part of the negotiation process and there was a
22 \$90,000 maximum sanction that was in effect, and they would be
23 required to provide an action plan in response to those
24 deficient measures, but that was all part of the negotiation
25 process.

11:05AM

1 Q. Did you think that a monthly sanction of less than
2 one-quarter of what Corizon grosses in a single day was likely
3 to have a significant effect on Corizon's behavior?

4 MR. STRUCK: Objection, Your Honor. Relevance,
5 foundation, and speculation. 11:05AM

6 THE COURT: All three overruled.

7 THE WITNESS: Yes.

8 BY MR. FATHI:

9 Q. Would you turn to Defendants' Exhibit 18, please. Please
10 let me know when you are there. 11:05AM

11 A. It's not here.

12 MR. FATHI: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MR. FATHI:

15 Q. Are you there, Director Ryan? 11:06AM

16 A. Yes.

17 Q. This is a letter dated June 16, 2016, dealing with
18 sanctions for April of 2016. Would you turn to Page 9, please?

19 A. Yes.

20 Q. This letter is signed by Richard Pratt and cc'd to you.
21 Have you seen this letter before? 11:07AM

22 A. Probably. I don't recall when.

23 Q. Given that you are listed as a cc, do you have any reason
24 to believe that you did not receive this letter?

25 A. No, I do not. 11:07AM

1 Q. On Page 9, Mr. Pratt states that there were 113 separate
2 performance measures that were non-compliant, and with a fine
3 of \$5,000 each that would add up to a sanction of \$565,000. Do
4 you see that?

5 A. Yes.

11:07AM

6 Q. But because of the cap that you negotiated it was capped at
7 90,000, correct?

8 MR. STRUCK: Relevance and cumulative. We have
9 already gone over this testimony with Mr. Pratt.

10 THE COURT: Both are overruled.

11:08AM

11 THE WITNESS: Repeat your question.

12 BY MR. FATHI:

13 Q. The presumptive sanction based on 113 instances of
14 non-compliance at \$5,000 apiece would have been \$565,000,
15 correct?

11:08AM

16 A. Yes.

17 Q. But because of the cap that you negotiated the actual
18 sanction imposed was \$90,000.

19 A. Yes.

20 Q. Would it be fair to say that on June 16, 2016, the date of
21 this letter, you were not satisfied with Corizon's performance?

11:08AM

22 A. Yes.

23 Q. If you turn to Exhibit 202, please.

24 Director Ryan, Exhibit 202 is a document dated June
25 30, 2016 entitled Amendment Number 11. Correct?

11:09AM

1 A. Yes.

2 Q. So this document is dated two weeks after the letter we
3 just looked at when you weren't satisfied with Corizon's
4 performance.

5 A. Yes.

11:09AM

6 Q. And in this amendment you extended Corizon's contract for
7 an additional year from March 2017 to March 2018, correct?

8 MR. STRUCK: Objection. Relevance.

9 THE COURT: Overruled.

10 THE WITNESS: Yes.

11:09AM

11 BY MR. FATHI:

12 Q. And you gave Corizon a 4 percent raise, correct?

13 A. A 4 percent CPI increase was requested and approved by the
14 legislature.

15 Q. So you gave Corizon a 4 percent increase on what they were
16 paid under this contract.

11:09AM

17 A. Yes.

18 Q. And, once again, the raise was retroactive to March of
19 2016.

20 A. Yes.

11:10AM

21 Q. Would you look at Exhibit 20, please?

22 A. Which one?

23 Q. 20.

24 Director Ryan, Exhibit 20 is a July 25, 2016 letter
25 from Richard Pratt to Cindy Black. Correct?

11:10AM

1 A. Yes.

2 Q. So this letter was written about three or four weeks after
3 you extended Corizon's contract for the second time and gave
4 them a raise for the second time.

5 A. It was written after they were approved for a CPI. 11:11AM

6 Q. It was written after the contract was extended for an
7 additional year, correct, about three to four weeks after that?

8 A. Yes.

9 Q. And about three to four weeks after Corizon received the
10 4 percent increase in what they were paid. 11:11AM

11 A. Yes.

12 Q. Would you turn to Page 9, please.

13 Are you there?

14 A. Yes.

15 Q. You were copied on this letter, correct? 11:11AM

16 A. Yes.

17 Q. Have you seen this letter before?

18 A. Probably.

19 Q. So this letter deals with the sanctions imposed on Corizon
20 for May of 2016. Correct? 11:11AM

21 A. Yes.

22 Q. And on Page 9, Mr. Pratt writes that 121 measures were
23 non-compliant, which would have resulted in a fine of \$605,000,
24 correct?

25 MR. STRUCK: 402, 403. Objection. 11:12AM

1 THE COURT: You are going to have to -- I don't see
2 how this is -- you said 402 and 403. I don't see how those
3 apply here.

4 MR. STRUCK: Relevance. And this is cumulative from
5 the testimony that we already heard about yesterday. 11:12AM

6 THE COURT: I thought you were saying something
7 different because you had been using different words before.

8 MR. STRUCK: I thought I would try 402, 403.

9 THE COURT: We don't have a jury here so we're not
10 hiding anything from them. So I was just curious about that. 11:12AM

11 And you should understand that the plaintiffs have an
12 opportunity to inquire about whether or not the Department of
13 Corrections people who are defendants in this case have taken
14 all reasonable steps, and he is tracking through what seems to
15 be a reasonable inquiry on that approach. That's why every 11:12AM
16 single one of your objections has been overruled. So this
17 objection now is the same as the objections you have made
18 previously. You are entitled to make each and every one of
19 those objections but just so you understand I'm unlikely to
20 sustain any of them. 11:13AM

21 MR. STRUCK: I understand, Your Honor, and the reason
22 why I'm objecting to relevance is because of the date on this
23 is far before any issues with respect to the order to show
24 cause.

25 THE COURT: I never wanted to get into the situation 11:13AM

1 where I have to have an order to show cause so it's an ultimate
2 dramatic sanction, and if we had been in a position where
3 reasonable steps had been taken we would imagine that we would
4 have had corrections that would have addressed the failure to
5 comply with the stipulation.

11:13AM

6 And so this is, to me, inquiring with respect to the
7 Director about the track record that led us down the road that
8 has me contemplating this very serious sanction, so that is a
9 road that would be populated by whether reasonable actions were
10 taken or not.

11:13AM

11 The date that you asked me to focus on when I
12 postponed the consideration of it allowed me to focus on a
13 particular time period of whether or not you had taken all
14 reasonable steps as defendants with the order to show cause.
15 That's fair. But it also seems fair to me that the context of
16 the case, one that you have also made presentations about in
17 your direct examination of this witness and other witnesses on
18 the order to show cause, have also gone beyond the date and the
19 time period from my initial declaration in the summer of last.
20 To October of last.

11:14AM

11:14AM

21 So I think what's good for the goose is good for the
22 gander. The objections are overruled.

23 BY MR. FATHI:

24 Q. Would you like me to repeat the question, Director Ryan?

25 A. Yes.

11:14AM

1 Q. On Page 9 of Exhibit 20 Mr. Pratt writes that in May of
2 2016 121 measures were non-compliant, which would have resulted
3 at \$5,000 apiece in a fine of \$605,000, correct?

4 A. Yes.

5 Q. But because of the cap you negotiated the actual fine was
6 only \$90,000.

11:15AM

7 A. Yes.

8 Q. Would you turn back to Page 1, please?

9 Please read aloud the fourth paragraph, beginning
10 "Corizon must demonstrate".

11:15AM

11 A. "Corizon must demonstrate immediate improvement in the
12 performance measure scores ADC will not tolerate the
13 perpetuation of the status quo."

14 Q. Did Corizon demonstrate immediate improvement after this
15 July 25th, 2016 letter?

11:15AM

16 A. I don't recall.

17 Q. You don't recall?

18 A. I don't recall.

19 Q. In the same paragraph, would you please read the third
20 sentence beginning "Corizon cannot continue".

11:15AM

21 A. "Corizon cannot continue to conduct business as usual with
22 the attitude that paying a sanction of \$90,000 each month is
23 simply the acceptable cost of doing business."

24 Q. Next, would you please read the first two sentences of the
25 fifth paragraph.

11:16AM

1 A. "Time is certainly of the essence in the absence of
2 immediate and significant improvement in performance. Corizon
3 will relegate ADC to operating the inmate health care system
4 under judicial monitoring for many years to come."

5 Q. Did Corizon demonstrate immediate and significant
6 improvement in performance after this July 25, 2016 letter?

11:16AM

7 A. I think I would have to look at subsequent monthly letters
8 to answer that question. I don't recall.

9 Q. Would you next turn to Exhibit 204, please.

10 Exhibit 204 is a document entitled Amendment 13 and
11 dated June 29, 2017. Correct?

11:17AM

12 A. Yes.

13 Q. And in this document, in this amendment, you extended
14 Corizon's contract a third time to June 30, 2018?

15 A. Yes.

11:17AM

16 Q. And you gave Corizon a raise for the third time.

17 A. Corizon received a 4 percent consumer price index increase.

18 Q. Corizon started to be paid 4 percent more under the
19 contract.

20 A. Yes.

11:17AM

21 Q. And once again the raise was retroactive to March 4th,
22 2017.

23 A. The CPI was retroactive to March 4 of 2017.

24 Q. Would you turn to Exhibit 205, please.

25 MR. FATHI: May I approach, Your Honor?

11:18AM

1 THE COURT: You may.

2 THE WITNESS: I don't find it up here.

3 THE COURT: Assistance is on its way.

4 THE WITNESS: I'd stand corrected. Here it is. I
5 found it.

11:19AM

6 BY MR. FATHI:

7 Q. Director Ryan, Exhibit 205 is a document entitled Amendment
8 Number 14 dated September 6, 2017. Correct?

9 A. Yes.

10 Q. And you testified on direct examination that this amendment
11 removed the caps on the sanctions and also provided for some
12 incentive payments, correct?

11:19AM

13 A. Yes.

14 Q. Would you now look at Exhibit 103, please.

15 THE COURT: This is Mr. Pratt's summary.

11:20AM

16 MR. FATHI: It's Mr. Pratt's summary. Yes. I believe
17 it's defendants'.

18 THE COURT: Okay.

19 BY MR. FATHI:

20 Q. Do you have it, Director Ryan?

11:20AM

21 THE COURT: Go ahead and see if you can help find it.

22 THE WITNESS: I think this is it. It says -- it's
23 entitled Sanctionable PMs at the top?

24 MR. FATHI: May I approach, Your Honor?

25 THE COURT: You may. Please.

11:20AM

1 MS. EIDENBACH: Your Honor, may I approach?

2 THE COURT: You may as well. It takes a village.

3 MR. FATHI: Your Honor, if defendants have an extra
4 copy could they perhaps come to the rescue and provide it to
5 the witness? 11:21AM

6 THE COURT: Do you all happen to have an extra copy of
7 Mr. Pratt's summary.

8 If you can find it we can also make copies. Mine's
9 been annotated so it wouldn't be helpful.

10 We have one for the witness here that we can present. 11:22AM
11 It's been placed before the Director as what's been marked and
12 admitted into evidence as Demonstrative Exhibit 103 subject to
13 the reservations that will be heard once the plaintiffs take a
14 look at the January numbers.

15 MR. FATHI: Thank you, Your Honor. 11:22AM

16 BY MR. FATHI:

17 Q. Director Ryan, have you seen this document before?

18 A. No.

19 Q. This was -- Mr. Pratt testified yesterday that this is a
20 document that he prepared to track the sanctions that were 11:22AM
21 imposed and then, more recently, the incentives that were
22 awarded to Corizon under the contract.

23 Would you turn to Page 2, please, and you will see
24 down the left-hand column there are various months.

25 Do you see that? 11:23AM

1 A. Yes.

2 Q. And the extreme right-hand column is labeled Total
3 Sanctions Applied. Do you see that?

4 A. Yes.

5 Q. How much in sanctions was imposed in October of 2017?

11:23AM

6 A. 90,000.

7 Q. November '17?

8 A. 200,000.

9 Q. December '17?

10 A. 210,000.

11:23AM

11 Q. And January '18.

12 A. 175,000.

13 Q. So that adds up for those four months to \$675,000.

14 Correct?

15 MR. STRUCK: Your Honor, I think that math is
16 incorrect.

11:24AM

17 THE COURT: Double check, please.

18 MR. STRUCK: 585,000.

19 MR. FATHI: No. It's 675,000.

20 MR. STRUCK: Your Honor, for November, December, and
21 January.

11:24AM

22 MR. FATHI: And October.

23 MR. STRUCK: I'm sorry.

24 BY MR. FATHI

25 Q. So that adds up to 675,000, correct?

11:24AM

1 A. I will accept that number. I don't have a calculator.

2 Q. Would you like to borrow mine?

3 A. No.

4 Q. Would you next turn to Page 3, please?

5 And this page provides month by month the total
6 incentives applied.

11:25AM

7 Do you see that?

8 A. Yes.

9 Q. What was the amount of incentives in October of '17?

10 A. 485,000.

11:25AM

11 Q. November '17?

12 A. 635,000.

13 Q. December '17?

14 A. 545,000.

15 Q. January '18?

11:25AM

16 A. 885,000.

17 Q. And here the math is helpful we've already done for us.

18 That adds up to \$2,550,000, correct?

19 A. Yes.

20 Q. So in those four months, October '17 through January '18, a

11:25AM

21 total of \$675,000 in sanctions were imposed and a total of

22 \$2,550,000 in incentives were awarded, correct?

23 A. Yes.

24 Q. Does that strike you as a smart business decision?

25 MR. STRUCK: Objection, Your Honor. That's

11:26AM

1 argumentative.

2 THE COURT: Overruled.

3 THE WITNESS: It was a negotiated business decision.

4 BY MR. FATHI:

5 Q. Does it strike you as a smart business decision? 11:26AM

6 A. It was.

7 Q. Now there's no requirement, is there, that Corizon spend
8 this incentive money in any particular way?

9 A. I don't know that I can answer that question.

10 Q. Well, can you show me in Exhibit 205 where it requires 11:26AM
11 Corizon to spend the incentive money it gets in any particular
12 way?

13 A. I don't see anything in Amendment 14 that requires that.

14 Q. So Corizon doesn't have to spend this money on providing
15 health care? 11:27AM

16 A. I don't know that that is -- that to be the case.

17 Q. Are you aware of any requirement in the contract or any of
18 the amendments that constrains Corizon's ability in any way in
19 terms of what it does with this incentive money?

20 A. Not that I'm aware of. 11:27AM

21 Q. So Corizon can just keep the money, right?

22 A. Yes.

23 Q. Doesn't have to spend it on health care.

24 A. It may not require them to spend it on health care.

25 Q. Would you turn to Exhibit 31, please. 11:28AM

1 Exhibit 31 is the October 25, 2017 letter from you and
2 Mr. Pratt to the Corizon Board of Directors, and on pages 1 and
3 2 you list the 11 performance measures that are the subject of
4 the October 2017 order to show cause, correct?

5 A. Yes. 11:29AM

6 Q. Would you please read aloud the first sentence of the next
7 paragraph, beginning, "The Court found".

8 A. "The Court found these performance measures at these
9 prisons to be substantially non-compliant with a stipulation
10 almost one year ago and they are still non-compliant." 11:29AM

11 Q. Would you turn to Page 4, please.

12 Would you please read aloud the first two sentences of
13 the final paragraph.

14 A. "To be clear, we demand that Corizon immediately take all
15 reasonable steps to comply with the subject performance 11:29AM
16 measures as well as all other performance measures set forth in
17 the Court's order. These steps include but are not limited to
18 flying in Corizon health care personnel from other states to
19 fill vacant positions and implementing the daily real-time
20 monitoring data program advocated by Mr. Maldonado just last 11:30AM
21 week."

22 Q. At any time -- excuse me.

23 You demanded that Corizon fly in additional health
24 care from other states because you believed that additional
25 health care personnel were needed to achieve compliance with 11:30AM

1 the performance measures in the order to show cause.

2 A. I believe that flying in personnel was necessary for them
3 to fill the equivalent of the positions that they were
4 authorized to fill but had not.

5 Q. You believed that flying in additional health care
6 personnel was necessary to achieve compliance with the
7 performance measures set forth in the OSC, correct?

11:30AM

8 A. I believe it certainly would have been helpful and moved
9 them in that direction.

10 Q. At any time between October 25 and today did Corizon fly in
11 health care personnel from other states?

11:31AM

12 A. I believe they have but I would defer to Richard Pratt.

13 Q. How many?

14 A. I would defer to Richard Pratt. I don't know how many.

15 Q. What positions were they?

11:31AM

16 MR. STRUCK: Your Honor, foundation.

17 MR. FATHI: Your Honor if he doesn't know he can
18 obviously say that.

19 THE COURT: Do you know, Director Pratt -- I'm
20 sorry. Director Ryan, do you know?

11:31AM

21 THE WITNESS: I do not know.

22 THE COURT: Thank you.

23 BY MR. FATHI:

24 Q. So you don't know how many health care staff Corizon
25 brought in.

11:31AM

1 A. No, I don't.

2 Q. You don't know what positions they were.

3 A. I would defer to Richard Pratt to answer that.

4 Q. You don't know?

5 A. No, I don't.

11:32AM

6 Q. Do you know at what complexes they were deployed?

7 MR. STRUCK: Foundation.

8 THE COURT: It's says do you know. Overruled.

9 THE WITNESS: No, I don't.

10 BY MR. FATHI:

11:32AM

11 Q. Do you know when they arrived?

12 A. No, I don't.

13 Q. Do you know how long they stayed?

14 A. No, I don't.

15 Q. Do you know if they are still here?

11:32AM

16 A. No, I don't.

17 Q. This was pretty important to you, wasn't it?

18 A. Yes.

19 Q. You demanded it?

20 A. Yes.

11:32AM

21 Q. Would you please read the penultimate sentence of the final
22 paragraph?

23 A. You said read the first sentence?

24 Q. The penultimate sentence, the second to last sentence, of
25 the final paragraph.

11:33AM

1 A. "If the Court ultimately imposes any sanctions against us,
2 Corizon will be contractually responsible for comprehensive
3 indemnification pursuant to Paragraph Number 4 of contract
4 Amendment Number 10."

5 Q. So you are saying here that if the Court imposes contempt
6 sanctions Corizon has to pay them. 11:33AM

7 A. Yes.

8 Q. And so if that were to happen, no matter how large the
9 sanction was that Judge Duncan imposed, it wouldn't cost ADC a
10 dime, correct? 11:33AM

11 MR. STRUCK: Objection, Your Honor. Speculation and
12 foundation.

13 THE COURT: Why don't you rephrase the question.

14 BY MR. FATHI

15 Q. If Corizon were to, as you request, indemnify ADC for
16 contempt sanctions, then any contempt sanctions imposed by
17 Judge Duncan on ADC would not cost ADC anything. 11:33AM

18 MR. STRUCK: Same objection.

19 THE COURT: Overruled.

20 THE WITNESS: That is correct, in accordance with
21 Amendment Number 10. 11:34AM

22 BY MR. FATHI:

23 Q. Has Corizon agreed to pay any contempt sanctions that may
24 be imposed against you and Mr. Pratt?

25 A. They have not indicated one way or the other. 11:34AM

1 Q. So they have not agreed?

2 A. They have not indicated one way or the other.

3 Q. You do not have an agreement from Corizon that they will
4 indemnify you for any sanctions that may be imposed by the
5 Court.

11:34AM

6 MR. STRUCK: Objection, Your Honor. Foundation.
7 Calls for a legal conclusion. We have already talked about --

8 THE COURT: And I think there's been testimony that he
9 understands the agreement in Amendment 10 to provide for
10 exactly that. So you're saying he doesn't have an agreement?

11:34AM

11 MR. FATHI: I'm sorry.

12 BY MR. FATHI:

13 Q. Putting aside Amendment 10, has anyone from Corizon, since
14 you wrote this letter on October 25, said to you that Corizon
15 will indemnify ADC for part or all of any contempt sanctions
16 that may be assessed?

11:35AM

17 A. Not so far.

18 Q. Would you turn to Exhibit 33, please.

19 This is the November 6, 2017 letter to you from Jeff
20 Goldberg that we discussed or you discussed on direct
21 examination.

11:35AM

22 In the last paragraph on the first page, about five
23 lines up from the bottom, would you please read aloud the
24 sentence beginning "We are prepared".

25 A. "We are prepared with detailed analyses of the root causes

11:35AM

1 of non-compliance and are eager to work together with your team
2 on the ground to address them. We have substantial actions
3 under way that we are excited to convey. I hope you will
4 promptly ask your team to engage with us in these efforts."

5 Q. That's fine.

11:36AM

6 Did you ever request that Corizon provide you with
7 these detailed analyses of the root causes of non-compliance?

8 A. I would defer to Richard Pratt. They certainly have not
9 been provided to me to date.

10 Q. Would you turn to Exhibit 34, please.

11:36AM

11 And this is your -- excuse me.

12 Mr. Struck asked you about it so it may already be on
13 the table.

14 Exhibit 34 is the letter from you and Mr. Pratt dated
15 November 18 to the Corizon Health Board of Directors. On Page
16 1 in the first paragraph, about seven lines up from the bottom,
17 could you please read aloud the sentence beginning "We have
18 serious concerns".

11:37AM

19 A. "We have serious concerns whether Pentaho can be used
20 effectively for daily reporting on many of these performance
21 measures and the time required for Corizon to experiment
22 whether it can be so used is a luxury that we do not have."

11:38AM

23 Q. Director Ryan, what is Pentaho?

24 A. It is, my understanding, an automated program that Corizon
25 uses to try and report data. And I would also defer to Richard

11:38AM

1 Pratt to respond to that in greater detail.

2 Q. You spoke about the new CEO of Corizon. Is his name Steve
3 Rector?

4 A. Yes.

5 Q. You referred to him as CEO Number 7, correct?

11:38AM

6 A. Yes.

7 Q. Because he's the 7th CEO that Corizon has had since they
8 have had the contract with ADC.

9 A. Yes.

10 Q. And you believe that CEO Number 7 will succeed where CEO
11 Numbers 1 through 6 have failed.

11:39AM

12 A. That's the expectation.

13 Q. But you believe that CEO Number 7 will succeed in achieving
14 compliance where CEOs 1 through 6 have failed.

15 A. I have found Mr. Rector to be quite responsive and
16 progressive.

11:39AM

17 Q. Now, you testified that Mr. Rector has -- the phrase he
18 used was given direction to various people. Do you remember
19 that testimony?

20 A. Yes.

11:39AM

21 Q. How do you know that?

22 A. Because he's conveyed it personally.

23 Q. So who are the people -- who are some of the categories of
24 people he's given direction to?

25 A. Certainly to Corizon people, leadership in his

11:39AM

1 headquarters, and certainly to Mr. Maldonado and his team here
2 in Arizona.

3 Q. Okay. So how do you know that Mr. Rector has given
4 direction to people in Corizon headquarters?

5 A. Because he's told me that verbally. 11:40AM

6 Q. So you haven't seen anything in writing that Mr. Rector has
7 sent to people in Corizon headquarters?

8 A. No, I haven't.

9 Q. So your only source of information is that Mr. Rector tells
10 you so? 11:40AM

11 A. Yes.

12 Q. And how do you know that Mr. Rector has given direction to
13 Mr. Maldonado?

14 A. He's told me that. I have met with Mr. Maldonado and
15 Mr. Rector together and I have heard that firsthand. 11:40AM

16 Q. Have you seen any communications in writing between -- in
17 which Mr. Rector gives direction to Mr. Maldonado?

18 A. Not that I recall.

19 Q. Now, you testified, I believe, that in December of 2017
20 Corizon had achieved 93 percent compliance. Is that right? 11:41AM

21 A. Yes.

22 Q. How was that figure calculated?

23 A. It is, I believe, calculated by the number of compliant
24 performance measures in relationship to those that are, if you
25 will, non-compliant, and so if there's 849 performance measures 11:41AM

1 and they are, if you will, 93 percent compliant, take the
2 percentage 93 times 849 and that will give you the number of
3 performance measures that are compliant.

4 Q. And who performed that calculation?

5 A. That is information that is compiled by Richard Pratt and
6 his team of monitors. 11:41AM

7 Q. So who is the individual who performed the calculation that
8 you just described and came up with 93 percent?

9 MR. STRUCK: Foundation.

10 THE COURT: Overruled. 11:42AM

11 THE WITNESS: I don't know specifically. It might be
12 Richard Pratt or it might be one of his staff whose first name
13 is Jason.

14 BY MR. FATHI:

15 Q. But it wasn't you? 11:42AM

16 A. No.

17 Q. Now, in performing that calculation, how are performance
18 measures that were not applicable at a given facility in that
19 month counted? Were they counted as compliant?

20 MR. STRUCK: Foundation. 11:42AM

21 THE COURT: Sustained.

22 BY MR. FATHI

23 Q. Director Ryan, do you know in performing the calculation
24 that you just described how performance measures that are not
25 applicable at a given facility in that month are counted? 11:42AM

1 A. No, I don't.

2 Q. Do you know if in performing that calculation it includes
3 scores that were calculated using methodologies that the Court
4 has ruled are invalid?

5 A. It's my understanding there may be two performance measures 11:43AM
6 that the Court was in disagreement with the methodology.

7 Q. Well, my question is, for those performance measures that
8 were calculated using a methodology that the Court has since
9 ruled is invalid are those scores included in this average?

10 MR. STRUCK: Foundation. 11:43AM

11 THE COURT: Sustained.

12 BY MR. FATHI

13 Q. Do you know one way or the other?

14 A. I don't know specifically.

15 Q. Thank you. 11:43AM

16 Would you turn to Exhibit 35, please.

17 Director Ryan, Exhibit 35 is a November 22, 2017
18 letter from Richard Pratt to Roland Maldonado on which you are
19 listed as a CC. Have you seen this letter before?

20 A. I have. 11:44AM

21 Q. On Page 1 would you please read aloud the second sentence
22 of the second paragraph?

23 A. "This is the 19th consecutive month that Corizon's lack of
24 compliance with the stipulated agreement has resulted in a
25 \$90,000 sanction." 11:45AM

1 Q. Would you now read aloud the first sentence of the fourth
2 paragraph.

3 A. "Unsatisfactory performance on several performance measures
4 continues to be unacceptable."

5 Q. Do you agree with Mr. Pratt that unsatisfactory performance
6 on several performance measures continues to be unacceptable?

11:45AM

7 A. Yes.

8 Q. Would you turn to Exhibit 36, please.

9 Exhibit 36 is a December 17, 2017 letter from Richard
10 Pratt to Roland Maldonado, and if you turn to Page 3 --

11:46AM

11 THE COURT: You may have misstated the date.

12 MR. FATHI: Perhaps, Your Honor.

13 THE COURT: You said December 17. I think it's
14 December 15.

15 MR. FATHI: It is December 15, 2017. My apologies.

11:46AM

16 BY MR. FATHI:

17 Q. And if you turn to Page 3, Director Ryan, you are listed as
18 a CC. Do you see that?

19 A. Yes.

20 Q. Have you seen this letter before?

11:46AM

21 A. Yes.

22 Q. Would you please read aloud the second sentence of the
23 second paragraph.

24 A. "This is the 20th consecutive month that Corizon's lack of
25 compliance with the stipulated agreement has resulted in a

11:46AM

1 \$90,000 sanction."

2 Q. Is it acceptable to you that for 20 consecutive months
3 Corizon compliance with the stipulation resulted in the maximum
4 sanction available?

5 A. No. 11:47AM

6 Q. Would you turn to Exhibit 97, please, Defendants' Exhibit
7 97.

8 Director Ryan, Exhibit 97 is a letter from you and
9 Mr. Pratt to Roland Maldonado, correct?

10 A. Yes. 11:47AM

11 Q. And it's dated March 22, 2018. In other words, last
12 Thursday. Correct?

13 A. Yes.

14 Q. And the subject line is, quote, "Real-Time reporting
15 required by the Court demand for performance." 11:47AM

16 A. Yes.

17 Q. And this letter discusses the Court's requirement that ADC
18 report its compliance with the 11 performance measures that are
19 the subject of the order to show cause.

20 A. Yes. 11:48AM

21 Q. On Page 1, would you please read aloud the final sentence
22 of the second paragraph?

23 A. "The process to complete these reports has been developed
24 by Corizon and adjusted over the past several months in order
25 to result in a quality report to be shared with the Court." 11:48AM

1 Q. Please describe the process that is used to complete these
2 reports.

3 A. I defer to Richard Pratt to do that.

4 Q. Do you -- are you able to describe the process?

5 A. Not specifically, no. 11:48AM

6 Q. What adjustments have been made to this process over the
7 past several months?

8 MR. STRUCK: Foundation.

9 THE COURT: Sustained.

10 THE WITNESS: I would defer to Richard Pratt. 11:48AM

11 THE COURT: Don't answer the question. The objection
12 was sustained.

13 BY MR. FATHI:

14 Q. Director Ryan, do you know what adjustments have been made
15 to this process over the past several months? 11:49AM

16 A. No.

17 THE COURT: It may seem silly to you, sir, but your
18 lawyer made an objection. I sustained it. So we should at
19 least honor the courtesy that he won on that and not give him
20 what he was hoping to stop and not give an answer that he
21 thought was impermissible because there was not a foundation
22 for it. 11:49AM

23 BY MR. FATHI:

24 Q. Is it Mr. Pratt's job to know these things?

25 A. Yes. 11:49AM

1 BY MR. FATHI:

2 Q. Would you turn to page 3 of Exhibit 97, please, and would
3 you please read aloud the second paragraph.

4 A. "Corizon is now compiling numbers for the February 2018
5 real-time report. While the difficulty in the process to
6 determine these results is understood, it is nonetheless
7 paramount that significant improvement is shown with the next
8 report. That final report will be due no later than April 4,
9 2018."

11:49AM

10 Q. Director Ryan, why is it paramount that significant
11 improvement is shown with the next report?

11:50AM

12 A. It's paramount because of what the Court is considering
13 relative to being held in contempt, and therefore, if the
14 real-time reporting is to be made available then we have an
15 expectation that Corizon will deliver.

11:50AM

16 Q. What were the problems with the previous reports such that
17 significant improvement is necessary?

18 A. I don't know.

19 Q. You signed this letter, correct?

20 A. I did.

11:50AM

21 Q. But you don't know the answer to that question?

22 A. This letter was co-authored by myself and Richard Pratt and
23 I'm relying on his input relative to that topic.

24 Q. So you don't know the answer to that question.

25 A. No.

11:51AM

1 Q. It's Mr. Pratt's job to know that?

2 A. Yes.

3 Q. All right.

4 Finally, on Page 3 would you please read aloud the
5 fourth paragraph. It's only one sentence.

11:51AM

6 A. "Please provide a detailed synopsis of efforts taken over
7 the last five months to document Corizon's commitment to comply
8 with the subject performance measures and to fill vacant
9 positions on your rosters."

10 Q. Since you sent this letter on March 22 have you received
11 the detailed synopsis that you requested?

11:51AM

12 A. No.

13 Q. Why did you wait for more than five months after the
14 Court's order to show cause to demand this detailed synopsis?

15 A. We have been meeting and demanding of Corizon on a regular
16 basis for information relative to compliance with performance
17 measures.

11:51AM

18 Q. But this is the first time that you have set forth a
19 written demand for a detailed synopsis, correct?

20 A. We have asked repeatedly of Corizon for the details, so
21 yes, this is the first time that a demand has, in fact, been
22 made in writing.

11:52AM

23 Q. And my question is, why did you wait more than five months
24 after the Court's order to show cause to issue that written
25 demand for detailed synopsis?

11:52AM

1 A. We had seen some improvement in the hiring of the positions
2 that have been vacant and it was our determination at this time
3 to provide such a demand.

4 Q. Which positions that were vacant have now been filled?

5 A. I would have to defer to Richard Pratt. I do not know. 11:53AM

6 Q. Now, you testified about -- when Mr. Struck was questioning
7 you you testified about the difficulties, the challenges
8 involved in getting patients seen outside hospitals and by
9 outside providers. Do you remember that testimony?

10 A. I do. And so I guess my question is, are you referring in 11:53AM
11 the context of when it was self-op or since it's been Corizon?

12 Q. I'm going to ask about since it's been Corizon.

13 A. Pardon me?

14 Q. My questions will be about since it's been Corizon.

15 Are you aware of Corizon's failure to pay Florence 11:54AM
16 Anthem Hospital more than \$1 million that it owed them?

17 A. I think I have had some awareness from Richard Pratt that
18 there's been delays in payment. I cannot tell you the specific
19 amount.

20 Q. So you weren't aware that Corizon had failed to pay 11:54AM
21 Florence Anthem Hospital more than \$1 million that it was owed?

22 A. I'm not aware of the dollar amount.

23 Q. Were you aware that Florence Anthem Hospital said it would
24 not take patients from ADC until Corizon paid up?

25 MR. STRUCK: Objection, Your Honor. Counsel is 11:54AM

1 testifying.

2 THE COURT: He's saying were you aware. He's asking
3 the witness whether he knows and the witness can answer that
4 question without Mr. Fathi testifying.

5 Have you heard anything about this before? 11:55AM

6 THE WITNESS: I don't believe I have.

7 THE COURT: All right.

8 BY MR. FATHI:

9 Q. Are you aware of any other instances in which Corizon
10 didn't pay its bills -- didn't timely pay its bills to outside 11:55AM
11 hospitals or providers?

12 A. I don't recall any other times.

13 Q. I think you testified that the contracts with Tempe St.
14 Luke's and University of Arizona went by the wayside. Do you
15 remember that testimony? 11:55AM

16 A. Yes.

17 Q. Why did the contract with Tempe St. Luke's go by the
18 wayside?

19 A. My recollection was because of not maintaining a census
20 that was suitable to the hospital. I don't remember the 11:55AM
21 specific bed capacity. I do know that the Department had
22 provided the security staffing for that entire ward but I
23 believe it went by the wayside because there was not a stable
24 inmate census being maintained.

25 Q. And whose decision was it to terminate the contract? Was 11:56AM

1 that ADCs or Tempe St. Luke's?

2 A. It was at the behest of Tempe St. Luke's.

3 Q. Why did the contract with University of Arizona go by the
4 wayside?

5 A. Similar concerns, maintaining a census, and I think at the 11:56AM
6 time the University Physician Hospital was not enthralled with
7 the idea of inmates being brought to that hospital.

8 Q. So it's your testimony that the University of Arizona
9 Hospital simply did not want to treat ADC patients?

10 A. I don't believe they wanted the detention ward to be 11:56AM
11 occupied, and I -- in my recollection, I think they had
12 different designs for use of that space.

13 Q. And that would be reflected in written correspondence
14 between ADC and University of Arizona?

15 A. I don't recall if there was written correspondence. There 11:57AM
16 certainly would have been verbal conversations with the U of A
17 staff.

18 Q. And between U of A staff and who on ADC's side?

19 A. It probably would have been Richard Pratt, and it may have
20 also involved Carson McWilliams. 11:57AM

21 Q. Were you involved in those conversations?

22 A. I may have been involved in some of those conversations.

23 Q. And whose was the decision to terminate that contract,
24 University of Arizona or ADC?

25 A. It would have been the University. 11:57AM

1 Q. Now, you also testified that one of the challenges of
2 taking patients out is the large number of CO positions that
3 ADC has vacant, correct?

4 A. Yes.

5 Q. I think you testified the vacancy rate was 13.8 percent? 11:58AM

6 A. I believe so.

7 Q. Now, that vacancy rate isn't Corizon's fault, right?

8 A. No.

9 Q. Corizon has no control over how many COs there are.

10 A. Correct. 11:58AM

11 Q. So the lack of COs to take people to outside appointments
12 isn't Corizon's responsibility.

13 MR. STRUCK: Objection, Your Honor. That misstates
14 his earlier testimony.

15 THE COURT: So the lack of the COs to take people to
16 outside appointments isn't Corizon's responsibility. The
17 objection is overruled. 11:58AM

18 THE WITNESS: The responsibility of providing
19 correctional officer supervision for those inmates who have to
20 be taken out for consults and/or to emergency rooms is the
21 responsibility of the Department. 11:59AM

22 BY MR. FATHI:

23 Q. And if there aren't enough COs to take people to outside
24 appointments, there's nothing that Corizon can do about that.

25 A. If there are outside appointments that inmates have to be 11:59AM

1 taken to, the Department, through the use of overtime, and as
2 necessary of collapsing security posts, has to make available
3 the corrections staff to take the inmate out.

4 Q. But it sometimes happens, doesn't it, that there's an
5 outside appointment scheduled and the patient isn't able to go
6 to his or her appointment because there aren't COs to do the
7 escort? That happens, doesn't it?

11:59AM

8 A. That may happen on occasion.

9 Q. You are not aware of that ever happening?

10 A. It's probably happened.

11:59AM

11 Q. And if that happens, there's nothing Corizon can do about
12 that, correct?

13 A. Correct.

14 THE COURT: Mr. Fathi, it's noon.

15 Director Ryan, I've not been privy to the discussions
16 among your lawyer and the other lawyers about what your
17 availability was. I was told that we needed to hear you this
18 morning, and I don't know whether or not it's contemplated that
19 you would be back after the noon hour. So I need to turn to
20 the lawyers now and see what is the plan.

12:00PM

12:00PM

21 MR. STRUCK: I'd have to -- I'd like a chance to
22 confer with Director Ryan on that issue.

23 THE COURT: You can have a private conversation with
24 him. You can walk up to him and I will step away so you can do
25 that.

12:00PM

1 (Off-the-record discussion.)

2 MR. STRUCK: Okay, Your Honor.

3 THE COURT: Mr. Struck, what are your thoughts?

4 MR. STRUCK: He can come back at 1:00. I don't know
5 how much time Mr. Fathi has left on cross-examination. 12:01PM

6 THE COURT: How much do you think, Mr. Fathi?

7 MR. FATHI: I think perhaps 15 or 20 minutes.

8 THE COURT: How much for redirect?

9 MR. STRUCK: Probably something similar.

10 THE COURT: Okay. 12:01PM

11 All right. So we'll come back at 1:15. That affords
12 the opportunity to everybody to have time to --

13 MR. FATHI: Your Honor, given that Mr. Pratt is in the
14 middle of cross-examination could he please be admonished not
15 to discuss his testimony with anyone? 12:01PM

16 THE WITNESS: It's Mr. Ryan, not Mr. Pratt.

17 THE COURT: That's my fault and it's not in
18 retribution on anything. I didn't -- it was a complete
19 accident.

20 MR. FATHI: I'm sorry. 1:15, Your Honor? 12:01PM

21 THE COURT: Yes. 1:15.

22 (Recess from 12:02 p.m. until 1:17 p.m.)

23 THE COURT: Thank you very much. Please be seated.

24 Mr. Fathi, you may continue.

25 BY MR. FATHI: 01:17PM

1 Q. Good afternoon, Director Ryan.

2 A. Good afternoon.

3 Q. Let me just follow up on a couple of topics that came up
4 before the lunch break. When did the Tempe St. Luke's
5 contract, when was that terminated?

01:18PM

6 A. Three or four years ago. I don't remember the specific
7 year.

8 Q. And the University of Arizona contract, when was that
9 terminated?

10 A. I think that was terminated on -- when Wexford was the
11 provider. So that may have been 2012.

01:18PM

12 Q. Now we talked about Amendment 14, which authorizes
13 incentive payments to Corizon of up to \$3.5 million, correct?

14 A. Yes.

15 Q. Does all the money to pay for those incentive payments come
16 from savings that result from vacant CO positions?

01:18PM

17 A. Not all of it. Some of it may come from other line item
18 funds within the Department's appropriation.

19 Q. Well, of the 2.5 million incentive payments that have been
20 paid out so far, where did that money come from?

01:19PM

21 A. Came from either vacancy savings or other line item funding
22 within the Department's budget.

23 Q. What other line items?

24 A. Could be from some other operating funds. It could also be
25 from the contingency fund.

01:19PM

1 Q. Of the 2.5 million, what proportion or percentage came from
2 savings that resulted from vacant CO positions?

3 A. I don't know.

4 Q. Who would know the answer to that?

5 A. Maybe somebody that works in the administrative division
6 that oversees the agency's budget for me.

01:19PM

7 Q. But you don't know the answer to that?

8 A. The name of the individual?

9 Q. No. I'm sorry. You don't know how much of the 2.5 million
10 in incentive payments that have been paid out so far, how much
11 of that money came from savings that resulted from vacant CO
12 positions?

01:19PM

13 A. That's correct.

14 Q. Would you turn to Exhibit 31, please?

15 Director Ryan, I'm just using this exhibit for the
16 list that appears on Pages 1 and 2 for the 11 performance
17 measures that are subject to the Order to Show Cause. Do you
18 see that?

01:20PM

19 A. Yes.

20 Q. So Performance Measures 50 and 51 refer to, or involve,
21 consultations with outside providers, correct?

01:20PM

22 A. Yes.

23 Q. And would you agree that one of the challenges in getting
24 outside providers to agree to care for ADC prisoners is the
25 fact that there's a state law capping reimbursement for those

01:21PM

1 providers at the AHCCCS rates?

2 A. Yes.

3 Q. Since the Court's Order to Show Cause in October 2017, have
4 you submitted a written proposal to the legislature asking it
5 to repeal that law?

01:21PM

6 A. No.

7 Q. Since the Court's October Order to Show Cause have you
8 submitted a written proposal to the legislature asking it to
9 repeal the law that requires that ADC contract with a private
10 provider for health care?

01:21PM

11 A. No.

12 Q. Since the Court's October Order to Show Cause, have you
13 submitted a written proposal to the legislature asking it to
14 allow you to hire additional health care staff to supplement
15 those provided by Corizon?

01:22PM

16 A. No.

17 Q. Since the October order to show cause have you asked
18 Corizon to increase compensation for its health care staff?

19 A. I don't recall that we have asked Corizon to increase its
20 compensation for its health care staff, but there have been
21 conversations with Corizon about them offering an increase in
22 salaries to those prospective providers or employers.

01:22PM

23 Q. But you haven't requested that Corizon do that?

24 A. No.

25 Q. Since the October Order to Show Cause have you asked

01:23PM

1 Corizon to increase the number of health care staff it
2 provides?

3 A. No. We have asked Corizon to fill the positions that they
4 are currently authorized, and that includes whatever the number
5 was that I read earlier, the 925 plus the additional 79
6 positions that they opted to bring on board. The bottom line
7 is we have asked them, you need to fill the 1004 positions.

01:23PM

8 Q. Have you asked Corizon to increase the number of positions
9 beyond that 1004?

10 A. Under the current contract, no.

01:23PM

11 Q. Since the Court's October Order to Show Cause, have you
12 asked Corizon to increase its use of telemedicine?

13 A. We have had conversations with Corizon about expanding and
14 utilizing telemedicine services. So we have had that
15 discussion.

01:24PM

16 Q. Have you ever submitted, since the Court's October Order to
17 Show Cause, have you submitted anything in writing asking
18 Corizon to increase its use of telemedicine?

19 A. I don't know that we have submitted anything in writing to
20 them, but I know it has been a topic, certainly, in the
21 bi-weekly meetings that we have with Corizon.

01:24PM

22 Q. But to the best of your knowledge and recollection, you
23 have not submitted anything in writing to Corizon asking it to
24 increase its use of telemedicine since the October OSC?

25 A. I don't think so, but I would also defer to Richard Pratt.

01:24PM

1 Q. Since the October OSC, have you asked Corizon to stop
2 relying on an out-of-state pharmacy to provide medication for
3 prisoners?

4 A. We have not asked Corizon to stop using the out-of-state
5 pharmacy; however, we have asked them to increase the clinical
6 pharmaceuticals that are on site in Arizona so that that could
7 mitigate any issues related to medications being made available

01:25PM

8 when the inmates were transferred from one location to the
9 other. And by chance, if, in fact, Performance Measure 35
10 acknowledges that inmate X moved from Point A to Point B and he
11 either threw away his KOPs or the DOT was not there upon

01:25PM

12 arrival, the idea of expanding the clinical stock would be that
13 specific medication may be awaiting him there so it could be
14 administered to him before he is assigned to the unit or put in
15 a transitory unit until he arrives at his permanent location.

01:26PM

16 Q. So since the October OSC, have you asked Corizon in writing
17 to increase the clinical stock that's on site at the ADC
18 facilities?

19 A. I don't recall if we have asked in writing. I certainly
20 have asked verbally of both the Arizona VP and also as recently
21 as last week in my conversation with Mr. Rector, asked him to
22 increase the clinical stock of those pharmaceuticals. And I

01:26PM

23 believe some of that is in process. We did have a discussion
24 about why don't you consider relocating that pharmaceutical
25 company or arrange for a different pharmaceutical company here

01:27PM

1 in Arizona.

2 Q. But I believe your testimony is that since the October OSC
3 you have not asked Corizon to stop using an out-of-state
4 pharmacy to provide medication to ADC prisoners?

5 A. We have not asked them to stop using it. 01:27PM

6 Q. Since the October OSC, have you submitted a written
7 proposal to the legislature to increase compensation for
8 custody staff?

9 A. For custody staff?

10 Q. Yes. 01:27PM

11 A. I have submitted a decision package for a few years in a
12 row to the governor's budget office, and that is the Office of
13 Strategic Planning and Budgeting, and we have had extensive
14 discussions about the issue of compensation for the
15 correctional service series and the employees in the 01:28PM
16 Department. And we have conducted, if you will, breakthrough
17 projects to show that we have relatively high turnover and
18 large numbers of vacancies, and we have been able to
19 demonstrate that compensation is an issue.

20 The decision package was not able to go forward and 01:28PM
21 nor was it for any other state agency this session. The focus
22 in terms of compensation this session has been on education.

23 Q. When was the last time you submitted a decision packet
24 requesting an increase in compensation for ADC custody staff?

25 A. For the last three years in a row, three fiscal years, I 01:29PM

1 have done that.

2 Q. Right. My question is when was the most recent time that
3 you did that?

4 A. The most recent time was in the September submission,
5 September 2017 submission. 01:29PM

6 Q. So since the October OSC, have you submitted any written
7 requests to the legislature to increase compensation for
8 custody staff?

9 A. No.

10 Q. Have you informed Mr. Pratt that if compliance with the
11 stipulation does not improve he may face disciplinary action? 01:29PM

12 A. No.

13 Q. Have you informed any ADC employee that if compliance with
14 the stipulation does not improve he or she may face
15 disciplinary action? 01:30PM

16 A. No.

17 Q. You have the power to terminate the contract with Corizon,
18 correct?

19 A. I have the authority to give them 180 days notice to advise
20 them that we may be considering terminating that contract if
21 performance does not improve. 01:30PM

22 Q. But you haven't given that notice, have you?

23 A. No.

24 Q. The ADC health care contract is currently up for renewal,
25 correct? 01:31PM

1 A. The contract with Corizon is due to terminate at the end of
2 the current fiscal year, June 30th. There is an RFP process
3 underway. I am precluded by state law from discussing that
4 because it's an active procurement.

5 Q. Well, we'll get into that in a minute. But first, what is
6 the term of the new contract? How many years would it be?

01:31PM

7 A. The RFP proposal would be for an initial five-year period
8 of time.

9 Q. So from July 1, 2018, through June 30th of 2023, is that
10 right?

01:31PM

11 A. The initial five-year period of time, I believe that's
12 correct.

13 Q. Did Corizon bid on this contract?

14 A. Yes.

15 Q. How many other companies bid on the contract?

01:32PM

16 A. One other company.

17 Q. And what is the current procedural status of the selection
18 process?

19 A. Again, because it is an active procurement, I am precluded
20 by state law from discussing this any further.

01:32PM

21 MR. FATHI: Your Honor, this is critically important
22 testimony. We would ask that you either direct Director Ryan
23 to answer, and if there's a confidentiality issue, we close the
24 courtroom and seal the transcript.

25 THE COURT: Mr. Struck.

01:32PM

1 MR. STRUCK: Your Honor, he's precluded by state law
2 from discussing it. If this is an issue that he was going to
3 be questioned about, clearly he was expecting to do so. This
4 is something he should have brought to the Court prior to this
5 moment to allow us to fully brief this. This isn't something
6 that the Court should have to decide on the fly.

01:33PM

7 THE COURT: Well, I'm not going to wade into it
8 precipitously or, as you say, on the fly, because it is an
9 issue that has been raised routinely in our monthly status
10 meetings where the plaintiff has requested an update and the
11 State has given an update but always present in that
12 conversation has been the idea of what the director has just
13 mentioned, and that is that there are proscriptions. I have
14 never explored exactly what the proscriptions are. I'm not
15 going to do that now. So I'm not going to require the director
16 to answer any further questions beyond what he thinks he needs
17 to answer at this point.

01:33PM

01:33PM

18 If it is critical, and I'm not clear that it is in
19 terms of with respect to going forward because I'm dealing with
20 the current issue, which is whether or not sanctions should be
21 imposed for December and who the new contractor is, it doesn't
22 seem to be all that particularly germane. Tell me why that's
23 wrong, Mr. Fathi.

01:33PM

24 MR. FATHI: Well, Your Honor, the ultimate question
25 before the Court is whether the defendants have taken all

01:34PM

1 reasonable steps to achieve compliance with the stipulation.
2 If, in fact, they are currently considering renewing Corizon's
3 contract despite Corizon's failure to achieve compliance for
4 more than three years, that is highly relevant to the question.

5 THE COURT: It would be pursuant to a different
6 contract or different RFP, presumably, and it's one that would
7 take effect in the next fiscal year as I have now just heard
8 for potentially five years. So I don't think that it is true
9 all that you say, so I will stand by what I have previously
10 said. Thank you.

01:34PM

01:34PM

11 MR. FATHI: Thank you, Your Honor. I would just add
12 that, obviously, the Supremacy Clause provides that the Court's
13 ruling -- the Court is not bound by state procurement law.

14 THE COURT: As you have heard me before, I'm a
15 respectful applier of the Supremacy Clause. Comity requires
16 that we do so in this federal system. So again, I'm not going
17 to do something on the fly at this moment.

01:34PM

18 MR. FATHI: May I just ask my two remaining questions?

19 THE COURT: Surely.

20 MR. FATHI: Thank you.

01:35PM

21 BY MR. FATHI:

22 Q. Director Ryan, as we sit here today, is it possible that
23 Corizon could be offered another contract by ADC?

24 MR. STRUCK: Objection, Your Honor.

25 THE COURT: That's a ridiculous question. I don't

01:35PM

1 even need to hear what the objection is.

2 MR. FATHI: I'm sorry, Your Honor. I just wanted the
3 refusal to answer on the record.

4 THE COURT: We're intelligent people, Mr. Fathi. We
5 know that there are two people who have bid on the contract. 01:35PM
6 It is certainly possible that the procurement officers might,
7 in their best judgment, make a decision on that. So it's
8 possible. And he said he can't answer any more questions. So
9 the question -- no.

10 MR. FATHI: May I have a moment, Your Honor? 01:35PM

11 THE COURT: You may.

12 MR. FATHI: Nothing further. Thank you, Director
13 Ryan.

14 THE COURT: Before we proceed to the redirect
15 examination from your lawyer, I need to ask my question, 01:35PM
16 because it might engender an additional question from either
17 Mr. Fathi or Mr. Struck. So it seems to be a fair time for me
18 to go forward with my question. And it is this: You talked
19 today about Amendment 10 and Mr. Fathi, through his
20 cross-examination, presented the numbers with respect to the 01:36PM
21 dollar amounts both under the sanction provision and the
22 incentive provision.

23 The way that I have wrapped my mind around that is
24 similar to what Mr. Pratt described it as yesterday, the carrot
25 and the stick. So it seemed like Amendment 10 provided for a 01:36PM

1 carrot and a stick. And I gather that's a characterization
2 that you can relate to, because is it a fair way to describe it
3 generally, the incentive and the sanction provision?

4 MR. STRUCK: I'm sorry, Your Honor. I believe you are
5 referring to Amendment 14. 01:36PM

6 THE COURT: Yes. You are exactly right. Changing
7 what I said to Amendment 14, it says right here Amendment 14.
8 I'm sorry. I just didn't read it.

9 But is that fair, the carrot and the stick idea with
10 the incentive and the sanction? 01:36PM

11 THE WITNESS: Your Honor, yes.

12 THE COURT: And so the reason that that came up
13 yesterday, and the reason it came up today, both from the
14 plaintiffs' counsel and from your counsel, is that the
15 defendants suggest that this is an example of a step that was 01:37PM
16 taken to try to obtain compliance with the stipulation and that
17 I should consider it, that it was a reasonable step. And Mr.
18 Fathi today tried to walk through an argument that it wasn't a
19 reasonable step because the carrot was so golden that it
20 swamped the stick; that what we ended up with was a situation 01:37PM
21 where, if I wrote the numbers down correctly, that the sanction
22 was \$675,000 in other words, the stick; whereas the carrot was
23 2,550,000. So what you are left with, if -- I used the bunny
24 rabbit yesterday -- but if you are left with the pony, or the
25 burro, what you are left is the burro, as smart as all of us 01:38PM

1 know they are, and they are pretty wily, they would figure out
2 pretty quickly that they are doing well there, that the stick
3 is not a problem because the carrot they are getting completely
4 swamps it. Mr. Fathi said to you that doesn't seem like a very
5 good business decision, and you stuck by it. You said that it
6 was.

01:38PM

7 And I guess I wanted to understand why it is you think
8 that in light of the fact that it looks like there's no stick
9 when the carrot is so golden.

10 THE WITNESS: Well, Your Honor, there's \$3.5 million
11 potentially on the table as, if you will, the carrot. And as
12 you just enumerated, 2,550,000 of it has been obligated and, in
13 fact, I think it's actually a little more if you take into
14 consideration the possibility for the January 2018 information
15 which I know that Mr. Fathi alluded to in terms of the
16 sanctions. The sanctions are continuing to decline.

01:38PM

01:39PM

17 THE COURT: But there will never be a situation where
18 the sanction will be meaningful, because the carrot here will
19 be satisfied, and they will get the full amount of the carrot
20 and the sanction can never swamp the carrot.

01:39PM

21 THE WITNESS: Your Honor, that is correct; however,
22 that was the negotiated business decision that we made to try
23 and compel and encourage Corizon to achieve much better
24 performance.

25 THE COURT: I guess the question I have is, logically,

01:40PM

1 it seemed to me that at the time when the compliance rate for
2 the stipulation was overall around 90 percent, that it was
3 self-evident that if you rewarded somebody for compliance,
4 where the number is 91 percent, I mean, there's no doubt that
5 there's been major satisfaction of the performance measures,
6 but those have never been the focus of what we've been doing
7 here. What has been the focus are the ones that have dogged
8 the State and the Court with respect to critically significant
9 health care measures that there have been abject failure with.

01:40PM

10 So we have been focused on those whereas I kind of
11 would have expected the State to be focused also on those
12 rather than to say we're going to enter into an incentive
13 reward program that is going to reward you for the victories
14 you have already accomplished and we're agreeing you have
15 accomplished those because you get money for those.

01:40PM

01:41PM

16 And I think that's essentially what happened here,
17 where they get an enormous amount of money for things that
18 never really were at issue for me and you did this after a time
19 where I told you I was focused on particular measures and that
20 I was going to impose potentially sanctions for those
21 particular measures. And so your lawyers have said to me,
22 well, one of the reasonable steps that you took was this: It
23 doesn't look like a reasonable step to me because it seems to
24 be rewarding for things that were not at issue in my case. Do
25 you see where I'm going here, or you understand my analysis, at

01:41PM

01:41PM

1 least? I understand you said it was a negotiated position.
2 And I appreciate that, that there are circumstances that are
3 present at a given time. But I need to hear the subsequent
4 answer as to why that looked like a good idea at the time and
5 if it even doesn't look like a good idea now, why you are
6 sticking by it. Because in retrospect it doesn't look like it
7 was a good idea to me, but I'm just trying to understand fully
8 what the State's thought was here.

01:41PM

01:42PM

01:42PM

01:43PM

01:43PM

9 THE WITNESS: Your Honor, I maintain it was, and still
10 is, a good idea. We took the cap off the sanctions. And
11 certainly what is going to occur between now and the end of the
12 fiscal year, they are -- Corizon is going to probably benefit
13 from the rest of the incentive money, but then that is going to
14 probably be exhausted, I'm guessing, within a couple of months
15 based on their performance. There is no more incentive money
16 coming to them. They will be compelled to perform, to continue
17 to reduce the number of performance measures that are
18 non-compliant, and it is at \$5,000 apiece. And if I recall,
19 the January number, or the January sanction which I know has
20 been shared, that amount is 175. And it's probably in a couple
21 of months, maybe February, maybe through March's numbers, that
22 they will have benefitted from all of the incentive dollars
23 that are available, and then there are no more incentive
24 dollars throughout the rest of the contract for the fiscal
25 year. And I am not going to identify or look for any other

1 funding within the Department's current budget. We're all but
2 about to enter the fourth quarter of this fiscal year. And
3 frankly, all funds have been fully committed for all of the
4 various needs, operational needs in the Department for the rest
5 of the fiscal year.

01:44PM

6 And we're also awaiting the outcome of the legislative
7 process and what the FY 19 budget will bear, because as agency
8 directors, we're still waiting. I think we have done the best
9 we can do with the strategy that we have taken. And had we
10 considered greater amounts of the sanction, and I acknowledge
11 that Mr. Fathi used his math to say, okay, it's \$400,000 a
12 month and your sanction is -- or 400,000 a day and 90,000 a
13 month, so it's 25 percent. To consider sanctioning them, for
14 the sake of discussion, a full monthly amount, that would
15 result, I believe, in that contractor saying we want out of
16 this contract and we're giving you 180 days notice because we
17 will not negotiate or agree to a sanction that high.

01:44PM

01:45PM

18 So the approach that was taken, whether you or
19 plaintiffs agree or disagree, that, from our vantage point, was
20 a stick-and-carrot approach that we believe has demonstrated
21 that they, in fact, can achieve better performance, and they
22 have, from month to month. And I understand they acknowledge
23 the issues that you are weighing, but I believe we have made a
24 concerted effort to try and achieve the performance
25 requirements that you have wanted.

01:45PM

01:46PM

1 THE COURT: And I appreciate what you say, because one
2 of the things you said in particular is true and not so true.
3 And that is, I haven't come to -- it's clear that Mr. Fathi,
4 he's an advocate here. He's supposed to do that. But I
5 haven't decided yet. But I'm just trying to understand. And
6 what I'm trying to understand is me applying what is my ability
7 to think through a problem. And one of the times or things you
8 should do when you try to think through a problem is ask people
9 who have thought through the problem and whose job it is to
10 think through the problem. So I appreciate your answer. It
11 helps me to understand what the thought process is that was
12 employed.

01:46PM

01:46PM

13 I now need to turn to Mr. Fathi to see whether my
14 question engendered any further question from the plaintiffs.

15 MR. FATHI: Just one, Your Honor.

01:46PM

16 BY MR. FATHI:

17 Q. Director Ryan, are you aware at all of any discussions, any
18 discussions at all, of providing additional incentive money
19 beyond the 3.5 million that was made available under Amendment
20 14?

01:47PM

21 A. Am I aware?

22 Q. Are you aware of any discussions of that possibility?

23 A. The only discussion that I had occurred last week with Mr.
24 Rector, who asked me was there any additional incentive funds
25 available, and I told him no.

01:47PM

1 Q. That is the only discussion of that topic that you are
2 aware of?

3 A. That I'm aware of?

4 Q. Yes.

5 A. He alluded to it the week prior and said he was not looking
6 for a response from me the week prior. He asked me to give it
7 consideration, and we had a conversation telephonically last
8 week and I gave him that answer.

01:47PM

9 Q. So as you sit here today, you are confident that there will
10 be no additional funding made available for incentive payments
11 beyond the 3.5 million provided for in Amendment 14?

01:48PM

12 A. That is correct.

13 Q. Thank you, Director Ryan. One moment, if I may.

14 You mentioned the FY 19 budget request. What was the
15 amount requested in that request for the health care contract?

01:48PM

16 A. The discussion with OSPB --

17 THE COURT: Could you tell me what that is?

18 THE WITNESS: Office of Strategic Planning and Budget,
19 which is the governor's budget office.

20 THE COURT: Thank you.

01:48PM

21 THE WITNESS: There was a discussion with OSPB, and we
22 are waiting to find out what will be negotiated between the
23 Joint Legislative Budget Committee and the governor's budget
24 office. There is a \$30 million placeholder, and that's what
25 I'm aware of to this point in time.

01:49PM

1 THE COURT: And the placeholder, does that mean that's
2 an additional amount over the current fiscal year, or what is
3 that \$30 million amount? What does that mean, the placeholder?

4 THE WITNESS: Your Honor, at this point in time, the
5 placeholder is for \$30 million in addition to what the current
6 appropriated amount is for health care, which is \$148.8
7 million.

01:49PM

8 THE COURT: So if this placeholder is effectuated, the
9 new budget would be \$178 million for health care. Is that
10 correct?

01:49PM

11 THE WITNESS: Your Honor, if it's effectuated, yes.

12 THE COURT: I see. You say that in a way that
13 suggests that you asked for something you know you probably
14 won't receive but you asked for something hoping you will
15 receive something. Is that fair?

01:50PM

16 THE WITNESS: Your Honor, for the same reasons --

17 THE COURT: You don't want to talk any more about
18 that.

19 THE WITNESS: I do not want to talk any more.

20 THE COURT: Fair enough. Thank you.

01:50PM

21 BY MR. FATHI:

22 Q. Does the budget request you submitted in September for
23 fiscal year 19 include any funding for the kind of incentives
24 set forth in Amendment 14?

25 A. Mr. Fathi, it's a \$30 million placeholder. And again, I do

01:50PM

1 not wish to discuss or allude to an active procurement. So I
2 respectfully decline to answer your question.

3 THE COURT: And so we'll stop there, but there's one
4 more thing. I just wanted to check in. I was wanting to speak
5 to what I know because I read the newspaper. And I know that 01:50PM
6 it is true that we are in the season when state agency heads
7 are involved in these discussions. And so there was a hearing
8 a couple of weeks ago where I opened with my statement, and
9 this is when I most recently mentioned the Supremacy Clause,
10 and the idea that it was possible that there could come out of 01:51PM
11 this courtroom an order that would require the State to spend
12 more than it thought it needed to. And because of that
13 potential, I did not know that I would be in that situation,
14 but I thought, and I said, and if you haven't read the
15 transcript I am simply commending it to you to take a look at 01:51PM
16 that first couple of minutes of that hearing so that you could
17 see that as you talk to the legislature that there are reasons
18 to think perhaps that a placeholder is wise because we don't
19 know what my decision will be.

20 But I thought it was fair to alert you to alert the 01:51PM
21 State that it was potential, that there was a potentiality that
22 there would be a requirement that more be spent on health care
23 in the State of Arizona than people had been sitting at the
24 table thinking about because there was an external force that
25 could compel them to spend that money. And I just wanted to 01:52PM

1 make sure you had a chance to look because you weren't present
2 that day. And I'm not saying you should have been, but luckily
3 we have transcripts and you can see what it is. I am just
4 commending that to you.

5 THE WITNESS: And, Your Honor, I have read that. 01:52PM

6 THE COURT: Thank you, sir.

7 Thank you. Mr. Struck, you may continue with your
8 redirect examination.

9 MR. STRUCK: Thank you, Your Honor. I just have a few
10 questions, Your Honor. 01:53PM

11 THE COURT: Thank you.

12 REDIRECT EXAMINATION

13 BY MR. STRUCK:

14 Q. This morning, Mr. Fathi was asking you regarding your
15 knowledge as to what Corizon pays and what ADC pays with
16 respect to legal bills, whether it be bills from my office or,
17 if the Court so orders, plaintiffs' bills. And I think he also
18 asked you about the \$250,000 requirements in the stipulation.

19 Do you know who pays those bills or what percentage,
20 or do you know anything about that? 01:53PM

21 A. The \$250,000, as I recall, is spelled out in the stipulated
22 agreement. Specifically in terms of what is paid either to
23 your firm or to plaintiffs specifically, I do not know.

24 Q. Okay. Let me refer you to Exhibit 201, which is Amendment
25 10. And I wanted to ask you, Mr. Fathi asked you this morning 01:54PM

1 questions about -- I think he called it giving Corizon a raise.
2 And I think you referred to it as CPI. Can you explain to us
3 why Corizon was given a CPI increase, the Amendment Number 10,
4 in May of 2015?

5 A. I go back to the legislative change that occurred when the 01:55PM
6 decision was made to privatize health care. And the statute
7 spoke to a three-year and two one-year options to extend for a
8 potential of up to five years. This amendment specifically
9 speaks about Year 4 and Year 5, and a consumer price index
10 could be given consideration based on the average medical CPI 01:56PM
11 for the metropolitan Phoenix area as specified by a contract
12 increase.

13 So we made a business decision to pursue a 4 percent
14 CPI to extend that contract for at least one additional year.
15 We subsequently did that another time that carried it to the 01:56PM
16 full five years. And then lastly, we amended the current
17 contract, which otherwise would have ended March 3rd or March
18 4th of 2018 so it would sync up with the start of Fiscal Year
19 19.

20 Because this contract came about and Wexford walked 01:57PM
21 away after eight months, and they had given us notice in
22 November or December, we had a 90-day transition from one
23 vendor to the other, that made their contract effective on
24 March 3rd or 4th, which does not sync up with the start of a
25 fiscal year. So extending the current contract by an 01:57PM

1 additional four months, frankly, allows us, in the budgetary
2 process, to operate with one watch instead of with two.

3 Q. And I know that we discussed it earlier this morning, but
4 in addition, under Amendment 10, Corizon also agreed to an
5 indemnification provision with respect to its contract?

01:57PM

6 A. It certainly did.

7 Q. And so that was something that was bargained for in
8 exchange for the 4 percent CPI?

9 A. Yes.

10 MR. FATHI: Objection, Your Honor. Leading.

01:58PM

11 THE COURT: We've already had the answer. I believe
12 we had the answer. It's too late.

13 BY MR. STRUCK:

14 Q. Director, what would have happened if you didn't extend
15 this contract to the health care for the 34 -- 35, roughly
16 35,000 inmates in the Arizona Department of Corrections system
17 that Corizon was providing health care for?

01:58PM

18 A. If we didn't extend then there would have been, if you
19 will, a 180-day notice to go ahead and seek a replacement
20 vendor. Now, relatively speaking, in my knowledge and
21 experience in corrections, there are very few privatized health
22 care providers who can deliver health care to populations of
23 this size. And the three that I'm aware of, and there may be a
24 fourth, but it's certainly Wexford, Centurion, and Corizon.

01:58PM

25 And oftentimes one may replace another in other contracts, in

01:59PM

1 other states, throughout the United States. In retrospect, had
2 I been asked in what we have experienced, my advice to the
3 legislature, had we been asked, would have been a three plus
4 one plus one is not a good idea. If you are going to do this,
5 then do it for at least a minimum of five years. And I relate
6 that to some of the private prison contracts that we have
7 operated with. And we have had some good success with the
8 private prison operators, and we only contract with them in
9 Arizona for medium and minimum custody, not the higher custody
10 levels.

02:00PM

02:00PM

11 And one example of a terrible experience with a
12 private prison was the private prison riot that occurred two
13 summers ago in Kingman, and those inmates rioted literally for
14 three days; January 1st, 2nd, and 4th, and destroyed much of
15 that prison. And we had to move inmates temporarily, if you
16 will, nor nine months to other locations. And then that
17 contractor, MTC, had to make the State whole and replenish and
18 replace and rebuild that prison. And we terminated that
19 relationship contractually with that vendor.

02:00PM

20 So relatively speaking, there's not a lot of private
21 health care providers. So if we are going to continue with
22 privatized health care, then I believe those contracts need to
23 be for a minimum of a five-year period of time.

02:01PM

24 Q. If you would have let that contract, the three-year
25 contract expire without renewing it, what about going back to

02:01PM

1 self-operation? Could you have done that?

2 A. Realistically, I don't think returning to self-operations
3 is a possibility simply because of the costs associated with
4 the provider salaries that they demand. The State does not pay
5 health care staff what the privates do, and then if you think 02:02PM
6 about it in terms of the employer-related expenditures on top
7 of the salary, I don't believe for a second that the State of
8 Arizona will be in a position to afford returning to
9 self-operations.

10 THE COURT: That's a choice, isn't it? The State 02:02PM
11 could choose to do that? There's no constitutional
12 prohibition. There's no -- it's a fiscal matter, simply we
13 would need to find the revenue to do it. Is that right?

14 THE WITNESS: Your Honor, that's exactly right.

15 THE COURT: Okay. Thank you. 02:02PM

16 BY MR. STRUCK:

17 Q. And if I understood you correctly, did you say Corizon pays
18 more money than the State would pay health care providers?

19 A. Oh, yes, they are.

20 Q. Why don't you take a look at Exhibit 103. Mr. Fathi asked 02:03PM
21 you about that this morning. Do you have it, Director?

22 A. Yes.

23 Q. This is the sanction tracking exhibit that Mr. Fathi asked
24 you about this morning. And if you look at Page 1 -- excuse
25 me -- if you look at Page 3 of Exhibit 103, incentive tracking, 02:04PM

1 it shows up in July of 2017 that Corizon was about 88 percent
2 compliant with all of the CGARs. Is that right? Do you see
3 that number?

4 A. I do.

5 Q. And it shows, since July of 2017, a steady increase in
6 compliance with the overall -- Corizon's overall compliance
7 with the CGARs. Is that right?

02:05PM

8 A. It does.

9 Q. When you entered into Amendment 14, what was your goal with
10 respect to Corizon compliance?

02:05PM

11 A. The goal was to fully more than satisfy the requirements
12 and the percentages greater than 85 percent to get it as high
13 as possible in terms of compliance.

14 Q. And what percent do you want Corizon to be operating at?

15 A. Well, in terms --

02:06PM

16 Q. In terms of compliance?

17 A. In terms of compliance?

18 Q. Yes.

19 A. We wanted them to certainly remain well above the 85
20 percent, and certainly given the requirements of the Court's
21 order relative to the 11 performance measures, those need to
22 approach 100 percent.

02:06PM

23 Q. And when you are talking about the 85 percent, are you
24 talking about the 85 percent compliance within the stipulation?

25 A. Yes, I am.

02:06PM

1 Q. In terms of overall compliance with the 849 different
2 performance measures that are measured, what was your goal with
3 respect to overall compliance with those 849 measures? What
4 percentage --

5 A. At or above 85 percent. 02:07PM

6 Q. How about when you are looking at -- this is measuring the
7 849 measures, and it looks like in December -- let me look at
8 the percentage. It looks like in December, if you look at Page
9 3, it's almost 93 percent. Do you see that?

10 A. Yeah. That is correct. And I testified to that earlier 02:07PM
11 today.

12 Q. What percentage do you want Corizon to be operating at?

13 A. As close to 100 percent as they could possibly get.

14 Q. That's what the contract requires, right?

15 A. Yes. 02:08PM

16 Q. Once the \$3.5 million carrot is extinguished do the
17 sanctions go on?

18 A. Yes.

19 Q. In terms of the increase that Corizon has shown with
20 respect to the overall performance under the 849 performance 02:08PM
21 measures, do you believe that that incentive was money well
22 spent?

23 A. I do.

24 Q. Mr. Fathi asked you this morning why you didn't come to
25 every hearing. What do you do in order to keep track of what 02:09PM

1 goes on here in the courtroom?

2 A. That's a fair question. I receive a briefing from Richard
3 Pratt and other staff members who come to this courtroom. I
4 have regular briefings with you and other outside counsel. I
5 have almost daily conversations with my general counsel. I
6 devote a considerable amount of time to staying abreast of this
7 litigation and have been since its very beginning.

02:09PM

8 I know that Mr. Fathi acknowledged, and I confirmed,
9 that I was here in August when I was summoned by the Court. I
10 erred in my answer, because I also participated telephonically
11 on the, I believe, the July 21st, 2017, emergency telephonic
12 hearing last summer. I identified myself as on the call and I
13 listened to what had transpired.

02:10PM

14 But I stay, I think I stay abreast and I have regular
15 conversations with Richard Pratt, the general counsel, the
16 outside counsel, and other monitoring staff employed in the
17 monitoring bureau, such as Dr. Taylor. I have, again, regular
18 conversations and interactions with Corizon's VP, Mr.
19 Maldonado, Lynn Cole, weekly conversations with the CEO.

02:10PM

20 Q. You also, in response to one of the Court's questions, you
21 mentioned that you read a recent transcript, a transcript of a
22 recent hearing. Do you review transcripts?

02:11PM

23 A. I do. And the two most recent transcripts that I have read
24 end-to-end was the one on the 14th and the one on the 19th of
25 this month.

02:11PM

1 Q. Mr. Fathi, this afternoon, asked you whether or not you
2 have ever asked the legislature to repeal the law regarding
3 AHCCCS rates and your response was you hadn't. Can you explain
4 your answer?

5 A. The AHCCCS rate is spelled out statutorily, and the process 02:12PM
6 for getting any statutory changes is, frankly, very extensive
7 and very formalized. And as part of the executive branch of
8 government, if we want any consideration for a change in a
9 statute, we certainly can elevate it, write it up, have a
10 discussion with the governor's office legislative liaison. 02:13PM

11 But the bottom line decision in terms of executive
12 branch agencies moving changes to statutes, that is the process
13 that we go through. And it is the governor's legislative
14 liaison's decision and certainly that of the executive to
15 finalize what will and will not be allowed to go forward as far 02:13PM
16 as statutory changes. There was no request to change the
17 AHCCCS rates.

18 Q. He also asked you whether or not you have, since October
19 10th of 2017, requested that the legislature repeal the law
20 requiring privatization of health care and you responded that 02:13PM
21 you hadn't. Can you explain that answer?

22 A. Again, the statutory change that resulted in the
23 privatization of health care, we would go through the same
24 process that I briefly just described through the governor's
25 office. And again, it is not believed, it is not our 02:14PM

1 estimation, that it would be less expensive to return to
2 self-operations. We, in fact, believe it would be more
3 expensive.

4 THE COURT: But it might also be a provision of care
5 that could save the state ultimately money if it provided the 02:14PM
6 health care that was required. As I understood your testimony
7 earlier, it seemed at the time the move to privatization was
8 made that you were expressing -- maybe I misperceived this --
9 but I thought you were expressing some frustration with what
10 looked to be the idea that they were asking the Department of 02:15PM
11 Corrections to hire a contractor at roughly the same number of
12 dollars that the State had been doing it itself, and that would
13 necessarily not reflect the fact that a private contractor
14 would have to do what is the great -- respect the great model
15 of our country, and that is, have an ability to make money 02:15PM
16 doing it.

17 So the idea that you would be paying the same amount
18 of money to a private contractor that you were doing it
19 yourself would not respect the fact that there would have to be
20 some profit component of that. And was I reading your 02:15PM
21 frustration about that point right?

22 THE WITNESS: Your Honor, no, I don't think --

23 THE COURT: Okay. Then the second question is: Is my
24 observation right or wrong that there is a problem if you move
25 from roughly the same number of dollars that you are doing it 02:15PM

1 in-house to doing it out-house, would you necessarily not be --
2 I mean, I buy a shirt at Brooks Brothers and they mark it up
3 100 percent. I don't know what Corizon marks it up in order to
4 make the profit. But presumably they are not in this just for
5 laughs. They are in it to make money, so they've got to make
6 the money. There's going to be the counterargument that, well,
7 we are much more efficient than the State. I don't know that
8 there's proof of that because I have seen lots of things that
9 are inefficient in this case, and I never was watching what the
10 State was doing so I'm not there necessarily.

02:16PM

02:16PM

11 But, again, the basic point looked like the State
12 moved from a system where it was paying X number of dollars.
13 It then moved to a privatization where X number of dollars but
14 that X had to include something that wasn't there before but
15 that was the profit component.

02:16PM

16 Is that correct, my observation there?

17 THE WITNESS: Your Honor, I think that's fair. They
18 are certainly in business to make a profit. That said, health
19 care continues to be a very expensive proposition throughout
20 this country, both in the free world and in the corrections
21 environment. They are not in it to lose money. They are in it
22 to make a profit.

02:17PM

23 THE COURT: Thank you.

24 BY MR. STRUCK:

25 Q. And I think as you testified earlier, you discussed it a

02:17PM

1 little bit this morning, the amount of money earmarked for
2 health care in the Arizona Department of Corrections system has
3 increased since the inception of the privatization. Is that
4 accurate?

5 MR. FATHI: Objection, Your Honor. Leading. 02:17PM

6 THE COURT: Sustained.

7 BY MR. STRUCK:

8 Q. Has it remained the same? How has it changed with respect
9 to the total amount of money that the State spends on health
10 care? 02:17PM

11 A. At the time that we were considering privatized health
12 care, it was based on the fiscal year 2008 allocation for
13 health care per the legislature, and the allocation was \$137
14 million. And I went through a competitive process, and we also
15 ended up comparing what the Department of Corrections had been 02:18PM
16 expending on health care prior to the advent of privatized
17 health care. And my recollection was that our actuals had been
18 somewhere between 122, 124, \$125 million. The original
19 proposals from the respective vendors, there were three of
20 them, and it was Corizon, Wexford, and Centurion. And whatever 02:18PM
21 they were submitting it was supposed to be less than -- or less
22 than the allocation of \$137 million.

23 Two of the three came in with proposals of numbers
24 that were hovering near the 137 million, 136, 137. The third
25 vendor, their number was off the charts. It was 150 something. 02:19PM

1 Given the fiduciary responsibility, we went back across the
2 street to the legislature and said, look, they are proposing
3 numbers that are 10 or 12 million dollars more than us.

4 So there was a change in statute that basically said
5 words to the effect, best offer. When they resubmitted
6 Centurion came back with basically the same number. Corizon
7 and Wexford were a million dollars apart. And when we actually
8 went ahead and awarded, made a decision, we awarded it based on
9 an objective evaluation to Wexford. And I have already

10 described in earlier testimony that they started with 759.8 of
11 the Department's health care staff that they indicated that
12 they would employ. And the dollar amount of that award was
13 about 125.3 million. Then as time has gone on, through various
14 amendments, they have increased, some as a result of a scope
15 change on our part such as the issue of KOP and DOT, requiring
16 staff to deliver the DOT and do a watch swallow. Anyway, they
17 have increased by an additional 165 positions and that took the
18 contract up to, this past fiscal year, to 148.8. During this
19 several-year window Corizon went ahead and brought on, at their
20 own expense, an additional 79 positions that has brought their
21 operational and authorized staff number up to 1004.

22 The issue for us has been, you have continued to hover
23 at 8, 9, 10 percent vacant, and we want you to fill all those
24 positions and see what impact that has on performance. I hope
25 that answers your question.

02:19PM

02:20PM

02:21PM

02:21PM

02:22PM

1 Q. It does.

2 Mr. Fathi also asked you whether or not the
3 Department, and I think, if I understood his question, whether
4 the Department had decided whether the ADC would hire their own
5 health care staff to assist in the provision of health care. 02:22PM
6 Is that something you can even do?

7 MR. FATHI: Objection, Your Honor. It does misstate
8 the question.

9 THE COURT: How would you say that it's an unfair
10 question, Mr. Fathi? He's asking, Mr. Fathi has suggested, 02:22PM
11 which I think you did, that one of the things that was not done
12 was the State deciding to hire its own health care people. And
13 Mr. Struck has said is that something you can do? And we'll
14 hear whether the director thinks he can or not. How is that
15 unfair? 02:22PM

16 MR. FATHI: The question I asked, Your Honor, was did
17 Director Ryan approach the legislature and ask for additional
18 health care staff in addition to those provided by Corizon.

19 THE COURT: Will you accept that amendment, Mr.
20 Struck? 02:23PM

21 MR. STRUCK: I wrote down his question accurately, I
22 thought. I don't remember him saying exactly that. But if
23 that was his question, then I have another question. I
24 completely misunderstood what Mr. Fathi was asking.

25 THE COURT: Okay. 02:23PM

1 BY MR. STRUCK:

2 Q. So apparently Mr. Fathi asked you this afternoon whether
3 since October 10th of 2017 whether you have gone to the
4 legislature and asked the legislature for, I guess, additional
5 FTEs for Corizon to provide health care within the Arizona
6 Department of Corrections system and you said you hadn't done
7 that.

02:23PM

8 Why isn't that something you have done?

9 A. Because under the current contract, if you will, knowing
10 that they have operational and actual positions of 1004, we
11 wanted to see and want to see if they can perform and deliver
12 sufficiently with that staffing. I don't know that throwing
13 staff at this is the solution. They have never, and for that
14 matter, nor have Wexford, they have never filled up all their
15 positions. We would like to see that accomplished first.

02:24PM

02:24PM

16 But I have not gone to the legislature. And even if I
17 were to consider that, it still would have to go through the
18 Office of Strategic Planning and Budget and receive that
19 support.

20 Q. And I believe you told Mr. Fathi this afternoon that you
21 have asked Corizon to increase the clinical stock at the
22 facility. Can you explain that, please?

02:25PM

23 A. Yes. I will give it a shot.

24 Basically, Corizon's approach, if you will, is a
25 just-in-time approach in delivering pharmaceuticals. And it's

02:25PM

1 a pharmaceutical company that's situated in the Midwest and
2 they make deliveries. They fly in the medication two or three
3 times a week. I think it makes as much sense to have an
4 increase, or a greater amount of the clinical pharmaceuticals
5 on hand at the various prisons, at least a fundamental
6 inventory, because they ought to have the ability to understand
7 what are the most regularly prescribed pharmaceuticals that the
8 inmate population needs or consumes.

02:26PM

9 As I said earlier, I believe, to Mr. Fathi, I have had
10 a conversation with Mr. Maldonado and Mr. Rector in the very
11 recent days or past couple of weeks and said, why don't you
12 relocate or why don't you consider relocating a pharmacy here
13 in Arizona so if there is a delivery issue, it's already
14 situated here and it would be quicker and more expedient to
15 send transportation teams or Corizon staff to that
16 pharmaceutical to retrieve whatever that medication is and
17 deliver it same day to those institutions. Basically, they
18 either have committed to or are looking at increasing the
19 clinical stock, but they are not willing at this point in time
20 to entertain relocating a pharmacy.

02:26PM

02:27PM

02:27PM

21 MR. FATHI: Excuse me, Your Honor. Could we get a
22 time check? I believe this has been well over 15 or 20
23 minutes.

24 THE COURT: Where do you stand, Mr. Struck?

25 MR. STRUCK: I have one more question.

02:28PM

1 THE COURT: Great. Thank you.

2 BY MR. STRUCK:

3 Q. Mr. Fathi asked you why you hadn't, I guess, disciplined
4 Mr. Pratt or anybody else at ADC with respect to Corizon's
5 failure to comply with the Court's October 10th, 2017 order
6 regarding those 11 performance measures. And why have you not
7 done that?

02:28PM

8 A. Mr. Pratt is the assistant director that oversees the
9 monitoring bureau, and he has the responsibility of a
10 monitoring team that is dispersed and situated at each prison.
11 The shortcomings in terms of satisfying the performance
12 measures frankly does not rest with Mr. Pratt, and I do not
13 believe it is for the lack of effort on his part.

02:28PM

14 The one thing I will say about the performance and the
15 performance measures, their performance is improving and it has
16 improved considerably. And when you look at those percentages
17 of compliance that are well above 90 percent, that, from my
18 vantage point, is the overall big picture that we're trying to
19 ensure that they are fulfilling, as high as they can, the
20 performance measures. 100 percent would be a perfect world.
21 But I don't know that 100 percent is realistic in terms of
22 achievement. I'm not aware of any corrections system that
23 achieves that type of threshold. That's not to say we should
24 not continue to strive for that, but that's a pretty lofty
25 goal. I don't know that perfection is achieved.

02:29PM

02:29PM

02:30PM

1 Q. Thank you.

2 THE COURT: I have to say the last word on that. You
3 didn't ask me to enforce a stipulation that had the goal of
4 trying to accomplish an overall pretty good picture. You asked
5 me to get involved where you failed to meet the stipulation 02:30PM
6 with respect to certain triggering points, and those have been
7 the ones I focused on. I haven't focused on overall. And each
8 one of those performance measures was important to the parties
9 in the negotiation. So it could have been that you could have
10 arrived at a stipulation that said we're going to evaluate this 02:31PM
11 by an overall compliance level. That's not what you did. What
12 you did is you turned over to me a stipulation that said I
13 should look at individual performance measures and see whether
14 or not there had been a meeting of the benchmark with respect
15 to those performance measures. And where you failed to meet 02:31PM
16 the benchmark is where I have been involved. That's is the
17 only place I have been involved because that's where you asked
18 me to be involved. And you said if we can't get it done
19 ourselves you need to tell us how to get it done. And that's
20 what I have spent an enormous amount of energy and resources to 02:31PM
21 try to do, because it's an important task.

22 Now, it's fair, I think, to recognize the good
23 accomplishments. And I have always wanted to do that as well
24 because as I think you have read the transcript, I really did
25 at the time that we all sat down together in the negotiations 02:31PM

1 for the settlement. I really did think that it would work and
2 I thought that there was good faith efforts on everybody's side
3 to get to a place where we would not be where we have been now,
4 where we are. This is not what I envisioned at all. But the
5 performance measures that were individually negotiated are
6 individually important.

02:32PM

7 So to say that we have an overall accomplishment at 90
8 percent and somehow that excuses the fact we're at 20 percent
9 at others that are as important as individual ones for the
10 plaintiffs and the defendants in the case in the negotiation.

02:32PM

11 You all didn't come up with a document that said we have an
12 overall approval rate. There's no amalgamation of all of the
13 performance measures that is a measure of success or not. It's
14 success on the individual performance measures. And as I have
15 used those two words before, abject failure continues to be a
16 characteristic of this case with respect to certain performance
17 measures. And you have written about that in ways that I have

02:32PM

18 learned. Actually, I would have liked to have known about
19 this. I didn't know. Your lawyers never let me know that you
20 were doing this with Corizon in a way as aggressively as you
21 were. In fact, sometimes it was the opposite. I was being
22 told things that would suggest that you weren't being as
23 aggressive and I was puzzled. I didn't understand why that
24 was. I now have a greater window through the exhibits here to
25 see what was going on in the back.

02:33PM

02:33PM

1 Now I have to tell you, I'm not sure where that leaves
2 me, because it looked a little bit a day late and a dollar
3 short. I don't know that yet. I looked at the timetable of
4 the efforts when you said you were on notice in July of last
5 year about where I was maybe heading here, and then it turned
6 out that we moved to a situation where it was more
7 formalistically employed such that we have the October order.
8 And it seems like the October order, which your lawyers
9 challenged all the time with respect to my ability to do it,
10 but I heard from, sounded like, Mr. Pratt and maybe from you,
11 that that was exactly what you needed with respect to Corizon
12 to get somebody's attention to do it differently here. And I
13 don't know whether that's the situation. But I will tell you
14 that's one of my observations of what I have heard today.

02:33PM

02:34PM

15 So I have to leave you with the final word that is one
16 that I'm just compelled to offer, and that is, I am grateful
17 for the efforts that have produced compliance with the
18 performance measures. But as you, I think, can appreciate,
19 some of the performance measures that we have not been able to
20 achieve anywhere near compliance with the performance measures
21 in a system where it's sometimes inexplicable to me because one
22 institution accomplishes and others don't. And it would
23 suggest to me you would know how to do it. But again, there
24 are certain aspects of this, too, that you today, and I must
25 thank you for this, where you continue to educate me. As I

02:34PM

02:34PM

02:35PM

1 told you the last time we were this close together that I
2 really did appreciate it because I really didn't want to be
3 making things worse. And I think that to the extent that you
4 share with me what your observations are and I listen to those,
5 I think it reduces the danger that in applying the power that 02:35PM
6 you all have given me in this case that I will make a serious
7 misstep. The more I know the less likely that is.

8 So I have to end with this word again, one that I have
9 offered before. Thank you very much.

10 All right. So we need to then talk about how we 02:35PM
11 return to Mr. Pratt. But we also need to -- you can go about
12 your business. Forgive me for not saying that more formally.
13 People usually run as soon as they get the chance.

14 We need to talk about the remaining limited amount of
15 time that we have here today, because there are at least a half 02:35PM
16 hour of things that I need to address in terms of sort of
17 matters that are a concern for me with respect to going
18 forward. So what I would like to do is talk to you all about
19 what everybody's view is of the agenda that we think we need to
20 accomplish today so we can get a sense about what kinds of 02:36PM
21 things are on that agenda. Plaintiffs.

22 MS. KENDRICK: Yes, Your Honor. We foresee only about
23 15 minutes additional cross-examination of Mr. Pratt, so then
24 whatever redirect that Mr. Bojanowski might have.

25 THE COURT: Let's ask that question right now. How 02:36PM

1 much do you think?

2 MR. BOJANOWSKI: I would say maybe 40 minutes, maybe
3 more. I just don't know. There were a lot of topics that were
4 brought up, and Director Ryan had deferred some of his
5 information over to Mr. Pratt and I was thinking of, perhaps,
6 covering some of that. 02:36PM

7 MS. KENDRICK: You can't cover that on redirect.

8 MR. BOJANOWSKI: I think it would depend upon the
9 question that was asked and whether you asked about it in --

10 THE COURT: I must ask Ms. Kendrick not to have
11 conversations back and forth with counsel. That's one of the
12 rules -- 02:37PM

13 MS. KENDRICK: Apologize.

14 THE COURT -- we respect in court. We talk through the
15 Court. 02:37PM

16 MR. BOJANOWSKI: So obviously it's a rough estimate,
17 Your Honor. There were a lot of topics that were brought up
18 that may need to be explained, and I certainly don't want to --

19 THE COURT: All right. So I have a sense about that.

20 Ms. Kendrick, the next plaintiffs' item that you have
21 on your agenda today. 02:37PM

22 MS. KENDRICK: The only thing that was on our agenda,
23 sir, was that we close out this hearing on the Orders to Show
24 Cause so the Court can consider all the evidence and make its
25 decision about ordering fines. We need to close this out. We 02:37PM

1 need to get on. This is of paramount importance to the Court
2 and it's of paramount importance to our clients that they are
3 receiving the health care that they need with these critical
4 performance measures that are in your order. And we have
5 delayed it for now over several months, and we need to put it
6 to bed and close it out.

02:38PM

7 THE COURT: Okay. And then on the defendants' agenda?

8 MS. LOVE: Your Honor, we still have Carson McWilliams
9 who is set to testify today due to his availability on
10 Performance Measure 9. I anticipate his testimony will take
11 probably an hour to an hour and a half on direct because of
12 Performance Measure 35, I'm sorry, is of paramount importance
13 to this Court.

02:38PM

14 But on a larger issue, there has been no delay by
15 these defendants in these proceedings.

02:38PM

16 THE COURT: Well, hold it there. Forgive me. I think
17 I just saw a pleading where you admitted that you missed the
18 boat on 38 out of 50 of the matters that should have been set
19 for the OSC. That's not a delay?

20 MS. LOVE: I'm sorry?

02:38PM

21 THE COURT: Plaintiffs point out that you didn't
22 capture all of the ones you should have captured. So I said to
23 you, you need to respond. You need to tell me by close of
24 business last Friday. And in that pleading, not pleading, it's
25 a response, in that response you told me that you got it wrong

02:39PM

1 38 out of 58 of the times. Is that right? That didn't cause a
2 delay? If you had timely told the Court and plaintiffs what I
3 required you to tell me, and that was for December, in a timely
4 way, what numbers of the actual individual cases of failure to
5 provide the services, if you had told me that in a timely way
6 we would not have caused delay.

02:39PM

7 So I have to cut you short and be rather umbrageous
8 about the fact you are suggesting to me you have brought no
9 delay to the table here where you haven't done something of
10 critical importance and your lawyer told me that they couldn't
11 do it. So I didn't accept that argument last week, and you did
12 it, and then you told me that, oh, by the way, we did it
13 poorly.

02:39PM

14 So I need you to go back. And that's one of the
15 things on my agenda. I need you to go back and do it right
16 next time and review all of your work because I asked you to do
17 this much earlier and you didn't do it. You told me you
18 couldn't do it and then when I tell you to do it, you do it
19 poorly. So I guess I'm a really a little bit put off by the
20 idea that you haven't caused some delay here in this process
21 with respect to the OSC when the fundamental starting point was
22 tell me the exact number of cases in December where you failed
23 to provide the services that were required for the inmates in
24 the Arizona corrections system.

02:40PM

02:40PM

25 MS. LOVE: Your Honor, we have made a record on many

02:40PM

1 occasions. And I understand that, and the defendants
2 understand, that you disagree with our position and so does
3 plaintiffs. But we have apprised the Court from the beginning
4 of the paramount and substantial difficulty in doing real-time
5 reporting, that it's not a computer system that does it. It
6 requires people that are humans to try to report real time,
7 real-time reporting of incidents that are not necessarily
8 things that you can capture in real time.

02:40PM

9 As to my statement that we have not delayed these
10 proceedings, I am specifically referring to the process by
11 which we are presenting witnesses and scheduling witnesses to
12 testify.

02:41PM

13 THE COURT: I missed those words in your statement,
14 those caveats. I missed those. They weren't there, were they?
15 You made the broad statement you had caused no delay, and I'm
16 saying to you that you misstepped in a big way on the first
17 step here, and that is to tell me exactly the number of times
18 that you failed to comply in December.

02:41PM

19 And so you didn't come forth and tell me. The
20 plaintiffs had to come forth and give an exhaustive
21 presentation of where you had under-included by -- what was it,
22 500?

02:41PM

23 MS. KENDRICK: 420, sir.

24 THE COURT: 420. So you went and you said your team
25 said we can't do that and I found that unacceptable. And then

02:41PM

1 you came back and said, well, we have taken a look at what the
2 plaintiffs have done and we found out that actually we were
3 wrong in a great number of cases. And so that was very
4 troubling to me, and it also has potentially caused a
5 distraction and a delay.

02:42PM

6 So when you used those broad words saying you had done
7 nothing to delay here, I'm not accepting the idea that you did
8 what you were supposed to do in this case on the Order to Show
9 Cause. With respect to witnesses and delay, I have appreciated
10 and I have given you wide latitude, both sides, on what you
11 have presented, and I have tried to allow you that freedom and
12 flexibility so that we could be efficient and not involve
13 delay.

02:42PM

14 But on the overall topic of delay, I am very
15 disappointed in what you have done, and you have not made your
16 case any better when I have asked you to go back and do your
17 homework to make sure that what the -- you came back -- your
18 lawyer came back at me pretty strongly and said plaintiffs had
19 done it wrong and they had not given you complete information.
20 And instead of finding out that you were right, we found out
21 that you were wrong even more. So I'm sorry. I can't accept
22 that.

02:42PM

02:43PM

23 MS. LOVE: I disagree that the pleadings show that
24 there was a substantial number of, within plaintiffs' 420
25 examples, where we went back and had people look at actual

02:43PM

1 medical records, there were some instances where there may have
2 been underreporting or mistakes made by humans. There was
3 nowhere near 420.

4 And additionally, plaintiffs' counsel did not provide
5 medical record evidence of their 420 examples. If I remember
6 correctly, it was approximately 50 and we did a review.

02:43PM

7 THE COURT: And of those 50, how many were faulty?
8 38?

9 MS. KENDRICK: Your Honor --

10 MS. LOVE: I believe it was 38.

02:43PM

11 THE COURT: Ms. Kendrick, can you correct me if I'm
12 wrong about my recollection?

13 MS. KENDRICK: It is 38, sir. But I just want to kind
14 of focus everybody's eye back on the ball about the OSC hearing
15 and trying to set, perhaps, time limits on finishing up with
16 Mr. Pratt and with Mr. McWilliams and closing out the hearing.
17 To the extent Ms. Love wants to have some sort of oral argument
18 about the briefing, we can do that but I would rather do that
19 after we complete and have all witness testimony on the record.

02:43PM

20 THE COURT: Your opinion is accepted, Ms. Kendrick,
21 but I have to deal with what I have to deal with. And I would
22 prefer if you would allow me the latitude to run my courtroom
23 as I choose.

02:44PM

24 MS. KENDRICK: I apologize, sir. Thank you.

25 THE COURT: So we've got two witnesses that will

02:44PM

1 consume the time that we have today. That means that one of
2 the items on my agenda is one I have to turn to instantly, and
3 that is I had asked you to look for additional time so the
4 other matters I know that I have to get to.

5 I have to give the defendants an opportunity to have 02:44PM
6 their day in court on this. And so I cannot say that it is
7 wrong to allow you to have the time to complete Mr. Pratt and
8 the time to have your additional witness as well. So I need to
9 now turn to the idea of, if I take 15 minutes for my -- well, I
10 may not need -- part of what I just addressed was in my agenda. 02:45PM
11 So I have concluded that.

12 I need to find time as quickly as I can to conclude
13 the witnesses on the Order to Show Cause. I am unavailable the
14 remainder of this week. The possibility exists to either do it
15 on a number of early morning hours, we could do it between 8 02:45PM
16 and 9 on any given day in this week and next. We could do it
17 between 5 and 6 on any given day. I can run this courtroom
18 myself. I don't need to turn to court staff. I don't know
19 whether or not I actually need to have the court reporter
20 because I can also use electronic devices to record. I don't 02:46PM
21 know whether or not the court reporter would be amenable to
22 extra hours.

23 But I agree with what Ms. Kendrick says. We need to
24 do this straight away. And it's difficult in a court like
25 ours, one of the busiest in the country, to find these hours in 02:46PM

1 the courtroom.

2 So what I will do is I will take a 15-minute break now
3 and I would ask you all to take some time in those 15 minutes
4 to talk between the two tables there and hear what I have --
5 and consider what I have said about the possibility of trying
6 to fit this in. I have a bench trial next week Monday,
7 Tuesday, Wednesday, Thursday. Is that correct? We start at 9
8 each of those days and we run to 5 each of those trial days. I
9 could run the courtroom between 8 and 9 and after 5 on each of
10 those days and then on Friday what do we have?

02:46PM

02:46PM

11 THE MAGISTRATE JUDGE CLERK: Armida says we have April
12 5th from 9 to 11 and April -- we have April 5th from 9 to 11
13 and then on April 10th the settlement conference at 1:30 went
14 away.

15 THE COURT: So there is a 1:30 opening on the 10th,
16 did you say? The 10th of April from 1:30 you could have and
17 also this period of time between 9:30.

02:47PM

18 THE MAGISTRATE JUDGE CLERK: Between 9 and 11 on April
19 5th.

20 THE COURT: April 5th. So in addition to what I have
21 said, those are the other times we could turn to for the
22 completion of the OSC. So we'll let you all talk about this
23 and come back and talk about scheduling.

02:47PM

24 Thank you.

25 (Recess from 2:47 p.m. until 3:05 p.m.)

03:05PM

1 THE COURT: Thank you. Please be seated.

2 In the first instance, let me address my most recent
3 comments. I reconsidered what the transcript said and what was
4 said. And I may have cut you off, Ms. Love, before you were
5 getting to the point that would have qualified as you say it. 03:06PM

6 The problem is you stepped on a live wire for me. You saw. So
7 the truth of it is, it shouldn't have been directed at you. It
8 was directed the arguments that Mr. Lee made. He's not present
9 in the courtroom, and so consequently you got the brunt of it.

10 So that was a misdirected blow, and I shouldn't have done it. 03:06PM

11 So the point is one that's real for me, and that is
12 everything I said substantively about it is right, and I still
13 do believe was right. This was really an affront to me that
14 this basic kind of thing couldn't be done. And I understand
15 you still have the position that the real time is complicated. 03:06PM

16 To me, I thought I gave you plenty of notice and it seemed to
17 me that this was something that could be done. And it looked
18 to me like the plaintiffs had done it when they don't even have
19 full access to the medical records and they had done it in a
20 credible way. And I was really unsettled with the idea there 03:07PM
21 was an attack on what plaintiffs had done and that it hadn't
22 produced in the end.

23 But all of that said, it was wrongly directed to the
24 comment that you made. I used it as -- well, I didn't use it.

25 I think the right way to say it is exactly you stepped into 03:07PM

1 what was a live wire to me about delay and I apologize for
2 that.

3 MS. LOVE: Thank you, Your Honor.

4 MS. KENDRICK: Your Honor, during the break we
5 attempted to talk about how we were proceeding next. And 03:07PM
6 plaintiffs were under the impression that we would finish the
7 cross-examination of Mr. Pratt because I was in the middle of
8 cross-examining him when we ended for the day. In fact, I was
9 in the middle of questioning him about an exhibit. I wasn't at
10 any sort of closing point. And that's based partly on the fact 03:07PM
11 that defendants have represented that they were calling their
12 witnesses --

13 THE COURT: Can I ask you to do two things? One, step
14 closer to the microphone; two, speak a little more slowly. You
15 and I have the same disease so I'm a good person to observe it. 03:08PM

16 MS. KENDRICK: And I apologize to the court reporter.

17 So we would like to finish the cross-examination of
18 Mr. Pratt. I told you before that I think I have about 15 or
19 20 minutes left. I was in the middle of cross-examining him on
20 an exhibit. Defendants have announced that they are calling 03:08PM
21 Mr. McWilliams even though I have not finished my cross and we
22 haven't done the redirect. And I am out-of-state counsel. It
23 is a waste of my resources to come back to finish 15 minutes --

24 THE COURT: My general predilection is we would return
25 to what we were doing at the time that the director interceded 03:08PM

1 as an accommodation to his schedule. So my sense would be that
2 we are going to go back to Mr. Pratt. I want to give the
3 defendants an opportunity to tell me why that shouldn't be so
4 that's my predilection. So I'm cutting you off because you
5 have got the upside so far.

03:08PM

6 Go ahead.

7 MR. STRUCK: Yes, Your Honor. It's our preference
8 that we call Mr. McWilliams for a couple reasons. One is it
9 dovetails nicely with what the director was testifying about
10 with respect to Performance Measure 35 because Mr. McWilliams
11 is going to be able to fill in a lot of holes in the director's
12 testimony with respect to that.

03:09PM

13 Our preference would be that if we reconvene, say, on
14 April 10th, which kind of makes sense since April 11th is a
15 regular scheduled status hearing, that we would -- if we
16 complete Mr. McWilliams today, which I think we very well may
17 do that, I don't know, and then she can continue with Mr.
18 Pratt. But I would like to have Mr. Pratt come back primarily
19 because of your concerns with respect --

03:09PM

20 THE COURT: You will have the chance, maybe, for that
21 redirect. We'll go ahead and let Ms. Kendrick finish. We'll
22 go back to what we were doing at the time we took the director.

03:09PM

23 MR. STRUCK: That's fine. I wanted to be able to
24 provide the Court with some better information with respect to
25 this real-time reporting issue that you are obviously --

03:10PM

1 THE COURT: Well, I needed to know the names of all
2 the people who didn't get the services in December, and that
3 just didn't seem like something that would be impossible to do.

4 MR. STRUCK: And I understand that. And that's why we
5 thought I was thinking it might be better to have Mr. Pratt
6 come back on April 10th or whenever it is we reconvene.

03:10PM

7 THE COURT: Thank you.

8 You may continue. Mr. Pratt, would you kindly come
9 back to the witness stand? Thank you, sir.

10 THE WITNESS: Still under oath?

03:10PM

11 THE COURT: No, the oath is -- we don't do that
12 anymore. You are so old school here you know the rules.

13 No. You are still under oath. Thank you.

14 RICHARD PRATT,

15 called as a witness herein, having been previously duly sworn,
16 was examined and testified further as follows:

17 CROSS-EXAMINATION

18 BY MS. KENDRICK:

19 Q. Welcome back.

20 A. Thank you.

03:10PM

21 Q. Could you pull out defendants' Exhibit 33? They are to
22 your left.

23 A. Okay.

24 THE COURT: It's a good thing you went back to 33.

25 BY MS. KENDRICK:

03:11PM

1 Q. So when we left off we were on Page 2 of Exhibit 33.

2 A. All right.

3 Q. And this is the letter that was sent on November 6, 2017,
4 by Mr. Goldberg, the chairman of the Corizon board, to you and
5 Mr. Pratt in response to that letter that the two of you had
6 sent previously on October 25th.

03:11PM

7 What was your response when you saw this letter? Do
8 you remember?

9 A. To me it just sounded like a routine response. Nothing
10 special about it.

03:12PM

11 Q. How about the fact on the second page, in the second line,
12 Mr. Goldberg writes, "Any contrary understanding you have is
13 another product of the frustration factory." And then he, two
14 lines later, he refers to Mr. Maldonado's proposal for
15 real-time system as a, quote, "Rolly's real-time system
16 improvement tracking system."

03:12PM

17 Did that seem a little flippant to you?

18 A. Frankly, yes.

19 Q. Did it make you feel that he was not taking the contempt
20 seriously?

03:12PM

21 MR. BOJANOWSKI: Note an objection. That's asking
22 this witness to testify about what's in the mind of the person
23 who wrote the letter.

24 THE COURT: No, she asked the witness what it made him
25 feel. Overruled.

03:13PM

1 MR. BOJANOWSKI: What this witness felt?

2 THE COURT: I think that's what the question was: Did
3 it make you feel that he was not taking the contempt seriously?
4 Overruled.

5 THE WITNESS: No. The bottom line is I don't -- I was
6 not familiar enough with Mr. Goldberg at that point to know
7 where he was coming from with this. I didn't know if this was
8 routine for him in his method of communication or if -- I had
9 nothing to judge this against.

03:13PM

10 BY MS. KENDRICK:

03:13PM

11 Q. Okay. And then as you go further in the second paragraph,
12 about five lines from the end, he says, quote, "If we cannot
13 fully comply with court-ordered December failure reporter using
14 the Pentaho system we might, as a last resort," with those four
15 words bold and italics, "consider altering Rolly's real time
16 system improvement tracking to serve this purpose."

03:14PM

17 Did he or somebody else explain what the Pentaho
18 system was going to do?

19 A. Did who explain?

20 Q. Mr. Goldberg or anybody else from Corizon?

03:14PM

21 A. No, Mr. Goldberg didn't. And, you know, I have come to
22 understand the Pentaho system well enough to have a general
23 idea of what it can and cannot do.

24 Q. So let's turn to Exhibit 34.

25 A. All right.

03:14PM

1 Q. And this is the letter that you and Mr. Ryan sent in
2 response to Mr. Goldberg on November 8th, correct?

3 A. Correct.

4 Q. And about seven lines from the bottom of the first
5 paragraph you write, quote, "We have serious concerns whether
6 Pentaho can be used effectively for daily reporting on many of
7 these performance measures and the time required for Corizon to
8 experiment whether it can be so used is a luxury that we do not
9 have," close quote.

03:15PM

03:15PM

10 Describe your serious concerns with Pentaho.

03:15PM

03:16PM

03:16PM

11 A. Pentaho is a standalone computer program that will go into
12 the eOMIS, the electronic health record, and it can pull
13 certain pieces of information out of that. It can pull, for
14 instance, dates that things happen. It can pull numbers of
15 encounters. But as far as the ability to go in and derive
16 anything that has any subjectivity in it or any freestanding
17 text or anything along those lines, the program will not
18 recognize that. And a lot of these performance measures have a
19 subjective component to them, so Pentaho is really limited in
20 the ability to pull out answers to that.

21 Q. Is another concern the fact that Pentaho also depends on
22 how staff input information? So, for example, if a nurse has
23 different ways she could make a record of checking on a patient
24 in an infirmary, Pentaho may or may not pull it out?

25 A. Again depending upon -- yes, you are correct. And it

1 depends on where that information is entered into eOMIS. It
2 may be entered in several different areas and it may be a
3 footnote to some subjective note.

4 So when Pentaho may not recognize that as an encounter
5 to follow one of these performance measures that information 03:17PM
6 may well be in eOMIS but you have to look at each individual
7 file to see if that information is there. Pentaho will not
8 automatically be able to pull that out.

9 Q. So as an example, Performance Measure 66, which is about
10 the provider rounds in the infirmaries. 03:17PM

11 A. Yes.

12 Q. If you ran a Pentaho report to extract all the entries
13 where the provider had entered provider-infirmary round, it
14 would pull them out, correct?

15 A. If that's specifically what was used as a source, that's 03:17PM
16 correct.

17 Q. But if the provider saw somebody and she, for whatever
18 reason, coded it as provider followup, it wouldn't come out
19 with that Pentaho report, correct?

20 A. Not unless it was required in the Pentaho report. Not 03:17PM
21 unless that was one of the parameters that was used to pull the
22 information.

23 Q. To create the report?

24 A. Correct.

25 Q. Okay. Thank you. 03:18PM

1 What were your other concerns with Pentaho?

2 A. That's the basic concern with Pentaho, and the Department
3 does not have the ability to run Pentaho reports. We rely on
4 Corizon to run these reports for us.

5 Q. Have you ever asked to have the ability for the department
6 monitors to run Pentaho reports? 03:18PM

7 A. We have asked for that ability, and I have never been given
8 that ability to run those reports on my own.

9 Q. Did Corizon give you an explanation why they were not
10 giving you that access? 03:18PM

11 A. The ability to obtain reports is part of our contract with
12 Corizon. We can ask for any ad hoc as you, you know, report
13 that you want. So these are considered ad hoc reports. So
14 rather than giving us access to Pentaho -- and honestly, I
15 don't know that I would know what to do with Pentaho, because 03:18PM
16 again, it's a standalone program that belongs to Corizon. I
17 would have to be educated on how to use it, what to use it for.
18 There's a whole host of things that could possibly go wrong.
19 And I rely on Corizon to be able to provide me with information
20 that I'm asking for. 03:19PM

21 Q. Does the Department own the electronic records and the
22 information contained therein?

23 A. The records, yes.

24 Q. So if Corizon were to exercise its 180-day notice, or if a
25 different company were selected for the next contract, you 03:19PM

1 would still keep that information that's contained within
2 eOMIS?

3 A. That's correct.

4 Q. I want to turn to the next sentence after that one in
5 Exhibit 34. You write, quote, "As a result, we insist that
6 Corizon utilize additional employees at these facilities to
7 assist with the daily monitoring of these measures."

03:19PM

8 So you believe that additional Corizon staff was
9 necessary to monitor and do the daily reports for the Court?

10 A. That would be correct, yes.

03:20PM

11 Q. And who was doing this monitoring for the real time reports
12 from Corizon?

13 A. Corizon had set up staff to undertake this project, J.T.
14 Scalise was a major part of that project in trying to determine
15 what parameters would be used for Pentaho to pull this
16 information out of eOMIS.

03:20PM

17 Q. Did they assign individual court compliance employees to
18 each institution to oversee the real time data collection?

19 A. Not to my knowledge.

20 Q. How many people did the data collection and the monitoring
21 for the Courts report?

03:20PM

22 A. I don't know an exact number, but I know that Corizon
23 brought additional staff in, and they may be -- I may be
24 talking three or four people.

25 Q. On top of Mr. Scalise?

03:21PM

1 A. Correct.

2 Q. Does Chris Tucker still work for Corizon?

3 A. No, ma'am.

4 Q. Is there somebody in his position now?

5 A. I'm not sure who is maintaining that aspect of the
6 contract, but J.T. Scalise is the one that oversees this
7 reporting.

03:21PM

8 Q. Do they have any court monitors or court compliance people
9 still working at Corizon?

10 A. I'm not sure who exactly is assigned to that at this point
11 other than Mr. Scalise.

03:21PM

12 Q. And those people that they brought -- Mr. Scalise brought
13 in, you said it was two or three, they were from headquarters
14 of Corizon in Tennessee?

15 A. I'm not sure where they came from.

03:21PM

16 Q. But they don't normally work in Arizona?

17 A. Correct.

18 Q. Okay. And then the next paragraph you write, "Moreover, we
19 want to know how many medical providers Corizon will be flying
20 to Arizona to ensure compliance with this order and when we may
21 expect then them to arrive in Arizona."

03:22PM

22 Can we interpret that sentence to mean that as of
23 November 8th, 2017, no medical providers had flown to Arizona
24 to help?

25 A. No, I can't assume that. But I'm asking at this point,

03:22PM

1 we're asking for more. I don't know if it had happened prior
2 to that or not. I know subsequent to this, I know Corizon did
3 actually fly in a couple of medical providers and nurse
4 practitioners.

5 Q. So you don't interpret the phrase, the conditional verb,
6 when we may expect them to arrive in Arizona, to imply that
7 they have not yet arrived in Arizona?

03:22PM

8 A. No.

9 Q. Okay. On Page 2 of Exhibit 34, the second paragraph, it
10 states, quote, "Finally, your deputy general counsel informed
11 us via e-mail numerous times yesterday of Corizon's reluctance
12 and/or refusal to make its employees available to appear and
13 testify at hearings before Judge Duncan due to, quote,
14 'concerns about Corizon employees being subject to questioning
15 in court when we are not a party and do not have representation
16 at counsel table,'" close quote, close quote.

03:23PM

03:23PM

17 You go on to state that you demand that Corizon,
18 quote, "Immediately further reflect upon and retract its
19 position." Did Corizon retract their position on not making
20 employees available to testify?

03:23PM

21 A. Not to me, no.

22 Q. And then you state, quote, "We expect Corizon's Senior Vice
23 President of Arizona Operations, Roland Maldonado, and
24 Associate Vice President of Arizona Operations, Lynn Cole, to
25 arrange their respective schedules, collaborate with ADC's

03:24PM

1 legal counsel, and voluntarily make themselves available to
2 attend all hearings go forward."

3 And then you close out that says, "In the absence of
4 Corizon's full cooperation, ADC will have no recourse but to
5 subpoena Corizon personnel to appear and testify at further
6 hearings."

03:24PM

7 Are Roland Maldonado and Lynn Cole here today?

8 A. Yes.

9 Q. Were they here yesterday?

10 A. Yes.

03:24PM

11 Q. Did Corizon refuse to provide Mr. Maldonado as a witness to
12 testify at this contempt hearing?

13 A. Not that I am aware of, no.

14 Q. Did you and Mr. Ryan ever receive a written response to
15 this letter?

03:24PM

16 A. I don't think so. I don't know.

17 Q. Okay. Could you next turn to Exhibit 96, please?

18 A. Okay.

19 Q. And this is a letter that you sent to Mr. Maldonado on
20 March 22nd, 2018, last Thursday?

03:25PM

21 A. Correct.

22 Q. And the subject line is Corizon controlled substance
23 audits?

24 A. Yes.

25 Q. And I have from my notes that you testified yesterday that

03:25PM

1 you sent this letter because you were concerned about the
2 quality of the audits that were done?

3 A. Yes.

4 Q. Were you concerned about the result of the audit or how the
5 audit was actually done? Do you understand my question?

03:25PM

6 A. Yes, I do.

7 Q. Okay.

8 A. If you give me just one second to read their -- the results
9 of their audit.

10 Q. Take your time, sir.

03:26PM

11 A. This is based upon the results that they came up with.

12 Q. And you testified that you wanted to have them re-audit.

13 Did you want them to re-audit those same units that were done,
14 those seven units at five complexes or different units at
15 different complexes?

03:27PM

16 A. Statewide.

17 Q. Statewide. And what was your concern with the results?

18 A. They were showing substandard results from their own audit.

19 Q. And why is an audit of controlled substances important?

20 A. Pharmacy rules, regulations. This is medication. It's
21 important.

03:27PM

22 Q. And does federal law from the Drug Enforcement Agency also
23 have an impact on the maintenance of controlled substances?

24 A. I'm not familiar with the federal laws. I rely on my
25 pharmacy monitor to keep me informed on these things.

03:28PM

1 Q. And that's Martin Winland?

2 A. Mr. Winland, that's correct.

3 Q. And he's expressed concern to you about the audit results?

4 A. Yes.

5 Q. Let's turn to Exhibit 97.

03:28PM

6 A. Bear with me. I'm still looking.

7 MS. KENDRICK: May I approach, sir?

8 THE COURT: You may. Please.

9 THE WITNESS: Okay.

10 BY MS. KENDRICK:

03:30PM

11 Q. And that's a March 22nd, 2018 letter from you and Mr. Ryan
12 to Mr. Maldonado?

13 A. Correct.

14 Q. And the subject line is real-time reporting required by the
15 Court demand for performance?

03:30PM

16 A. Correct.

17 Q. And the last sentence of the second paragraph says, quote,
18 "The process to complete these reports has been developed by
19 Corizon and adjusted over the past several months in order to
20 result in a quality report to be shared with the Court."

03:30PM

21 What is the process that you are referring to?

22 A. The process is it goes back to Pentaho being able to pull
23 this information out of eOMIS and present us with a set of
24 files to be reviewed.

25 Q. So was Corizon using Pentaho to extract the data for the

03:30PM

1 reports to the Court?

2 A. Yes.

3 Q. What were the adjustments that were made over the past
4 several months?

5 A. As we have gone through the reports and we have looked at 03:31PM
6 them, changes and enhancements to what areas were looked at in
7 Pentaho have been adjusted. As you said, if a nurse reports
8 something in one area and it's the wrong area, it may be
9 necessary to go back into the reporting again and use a
10 different source to pull those of those areas as far as the 03:31PM
11 reporting goes. So it's just to -- these are enhancements that
12 are made to improve the quality of the information you are
13 getting to try to make sure that you are getting the best
14 possible source document that you can.

15 Q. So the last exhibit we looked at, Exhibit 38, the November 03:31PM
16 8th letter, you stated in it that we have serious concerns
17 about Pentaho. You described some of those concerns to us, and
18 then in March 22nd, a few months later, it's talking about the
19 reports and Pentaho being used.

20 So I'm curious what happened between November 8th when 03:32PM
21 you stated that there were serious concerns with Pentaho to
22 Corizon going ahead and using Pentaho anyway. How did that
23 happen?

24 A. The concerns are still there. The concerns have not
25 changed. It's the, again, the changes in the way that the 03:32PM

1 information is being pulled. I'm still not satisfied that all
2 the information that we're getting in the real time reports is
3 pristine simply due to the fact that there is subjective
4 information that's required in these performance measures that
5 Pentaho cannot pull.

03:32PM

6 Q. Okay. And so between November 8th and when defendants had
7 to report that data for December was February 5th, we were in
8 court a few times, correct?

9 A. Correct.

10 Q. And did you ever express to plaintiffs or to the Court that
11 you were concerned about the Pentaho reports that Corizon was
12 using to track the real time December data?

03:33PM

13 MR. BOJANOWSKI: Relevance.

14 THE COURT: Overruled.

15 THE WITNESS: Not to my knowledge.

03:33PM

16 BY MS. KENDRICK:

17 Q. And then if you turn to Page 3 of Exhibit 97, in the second
18 paragraph you state, quote, "Corizon is now compiling numbers
19 for the February 2018 real time report. While the difficulty
20 in the process to determine these results is understood, it is
21 nonetheless paramount that significant improvement is shown
22 with the next report. That final report will be due no later
23 than April 4th, 2018."

03:33PM

24 What are they improving from?

25 A. Trying to improve on the quality of the information that's

03:34PM

1 in the report.

2 Q. And did you or your counsel notify the Court of the
3 problems with the previous reports?

4 MR. BOJANOWSKI: Relevance.

5 THE COURT: Overruled.

03:34PM

6 THE WITNESS: Not to my knowledge.

7 BY MS. KENDRICK:

8 Q. Then in the next paragraph on Page 3, you reference the
9 correspondence going back as far as October 25th, 2017, and the
10 demand to take all reasonable steps including, but not limited
11 to, quote, "flying in Corizon health care personnel from other
12 states to not only fill vacant positions but also to implement
13 this daily real-time reporting effort."

03:34PM

14 At the time you wrote the letter last Thursday, did
15 you know how many people had been flown in by that point to
16 deliver health care or monitor?

03:35PM

17 A. Not a specific number, no.

18 Q. And I believe I asked you yesterday if you knew how many
19 and what type of staff have flown in. Were you able to
20 remember that information overnight by any chance?

03:35PM

21 A. No. My memory never got better overnight. I still don't
22 have specific numbers. I have asked Corizon to provide that to
23 me. I have not received a total number, dates, or specifics on
24 that.

25 Q. Okay. And then the penultimate paragraph says, quote,

03:35PM

1 "Please provide a detailed synopsis of efforts taken over the
2 last five months to document Corizon's commitment to comply
3 with the subject performance measures and to fill vacant
4 positions on your rosters," close quote.

5 Have you received a synopsis in response? 03:35PM

6 A. No, I have not. I asked to have that by yesterday, again,
7 understanding very short notice but I wanted it prior to court.
8 And I sent followup e-mail today to track that and find out
9 where that response is, and it's being worked on.

10 Q. Given the short notice, why did you wait until March 22nd 03:36PM
11 to ask for information that you needed for a March 26th
12 hearing?

13 A. I asked for it to memorialize the information so I would
14 have it fresh for court.

15 Q. Mr. Ryan testified earlier that Corizon pays its providers 03:36PM
16 more than the State did. Is that your opinion as well?

17 A. Yes.

18 Q. What is the differential?

19 A. It varies by position. But one of the issues with state
20 employees, and I think the director alluded to this, was the 03:36PM
21 retirement benefits and everything that go with that salary.
22 So in the end, I think it's more money, much more money that
23 Corizon is paying its staff than we had paid in the past.

24 Q. You mean for salary?

25 A. Yes. 03:37PM

1 Q. Okay. But does Corizon have a pension for life like state
2 employees get?

3 A. I don't know.

4 Q. So there's more benefits for state employees than for
5 Corizon employees?

03:37PM

6 A. I know what the state benefits are. I'm not sure what
7 Corizon's benefits are for their staff.

8 Q. And I just want to make sure, the per diem increases that
9 we talked about yesterday, have you asked Corizon specifically
10 to use that money to increase salaries for health care staff?

03:37PM

11 A. Specifically, no.

12 Q. Have you asked them to use that money to create more
13 positions?

14 A. Specifically, again, no.

15 Q. Have you asked them to put it for any sort of specific use?

03:38PM

16 A. No.

17 Q. And the three letters that we went through that you and Mr.
18 Pratt sent on October 25th, November 8th and March 22nd,
19 Exhibits 31, 34, and 97, you don't ask them anywhere in there
20 to raise salaries. Correct?

03:38PM

21 A. Myself and Director Ryan on that correspondence. No, we
22 did not.

23 Q. And in those letters, did you demand that Corizon make
24 greater use of the University of Arizona telemedicine program
25 to comply with the Court's order?

03:38PM

1 A. I don't believe that's mentioned.

2 Q. And you were here last month and then yesterday when Dr.
3 Robertson testified about the telemedicine program?

4 A. Yes.

5 Q. Yes. And he testified last month that the services are
6 available through the University of Arizona, but in his
7 opinion, Corizon is not availing themselves of those services.
8 Correct?

03:39PM

9 A. That's what he said, yes.

10 Q. Do you share that opinion?

03:39PM

11 A. Yes, I do.

12 Q. And is it fair to say that telemedicine would be an
13 important component of providing required health care to the
14 people who are in ADC's custody?

15 A. I think telemedicine is a very important adjunct to
16 services. Absolutely, yes.

03:39PM

17 Q. Because in part you wouldn't have the need of correctional
18 officers in a van to drive everybody 50 miles to see a
19 specialist?

20 A. Part of it, yes.

03:39PM

21 Q. And since Dr. Robertson testified last month, have you
22 requested that he or anybody else who works for you focus on
23 ensuring that Corizon expands their use of the Arizona
24 telemedicine program?

25 A. I have spoken with Dr. Robertson on numerous occasions and

03:40PM

1 I know he has continuing discussions with Corizon, Corizon
2 medical leadership, to increase the use of telemedicine, yes.

3 THE COURT: I'm sorry to interrupt, Ms. Kendrick.

4 You heard him say yesterday that nobody last year had
5 contacted him about that, though. Did your conversations take
6 place with him sometime other than last year? Remember I asked
7 him whether any time last year anybody contacted him about
8 ramping up the telemedicine program and he said no. You don't
9 remember me asking that question?

03:40PM

03:40PM

10 THE WITNESS: Are you talking about me asking him
11 about that?

12 THE COURT: Right. You said you spoke to him many
13 times.

14 THE WITNESS: I have, yes, sir.

15 THE COURT: Last year?

03:40PM

16 THE WITNESS: Last year, this year, yes. It's part of
17 routine conversations that we have.

18 THE COURT: So I guess maybe I should understand the
19 nature of the conversations. You weren't directing him to ramp
20 up the program. It was just more conversation of you both
21 lamenting that Corizon hadn't pursued it, that type of thing?

03:40PM

22 THE WITNESS: No, sir. It's conversations with him
23 and we talk about the lack of telemedicine use that we have
24 seen in our opinions. And for him -- and he goes forward to
25 his counterparts in Corizon and also talks about that and says

03:41PM

1 we need to ramp these things up.

2 THE COURT: Thank you. I'm sorry to interrupt.

3 THE WITNESS: I'm sorry. But my opinion of whether or
4 not we have had those conversations is probably different than
5 what you may have heard yesterday. 03:41PM

6 THE COURT: In what way?

7 THE WITNESS: If you are thinking Dr. Robertson said
8 nope, we're not talking about that, that is not the case.

9 THE COURT: I think the impression that I took from
10 his response was that there was no one who was pushing him to
11 reengage on telemedicine last year. 03:41PM

12 THE WITNESS: That's not my opinion at all, because I
13 have had those conversations with him.

14 THE COURT: Okay. Thank you.

15 THE WITNESS: You're welcome. 03:42PM

16 BY MS. KENDRICK:

17 Q. So my specific question was since he testified on February
18 28th, and you have heard what he testified to, did you direct
19 him to work with Corizon and work with the Arizona telemedicine
20 program to get it implemented and back to what it was when the
21 Department was self-operating health care services? 03:42PM

22 A. No, not specifically. Again, we had those conversations
23 about telemedicine and increasing the use of it and he
24 continues to have those conversations, to my knowledge, with
25 Corizon. 03:42PM

1 Q. Can you describe all the steps you have taken since the
2 Court issued its Order to Show Cause to secure specialty care
3 providers adequate for the need of the people in ADC's custody?

4 A. I rely on Corizon to find those specialty providers. I
5 get -- and recently I just had a list of specialty providers
6 that they have contacted in the past and their efforts to
7 attract more. They track this on a regular basis, and I'm
8 getting report now of all their efforts. So it's not incumbent
9 upon me to find those contracted providers for them. It's
10 incumbent upon them, and I expect that they do that and I
11 expect that they do whatever they need to to attract the
12 necessary people.

03:43PM

03:43PM

13 Q. Since the October order, have you contacted or reached out
14 to anybody from the University of Arizona or the Arizona
15 telemedicine program?

03:43PM

16 A. Not directly, no.

17 Q. And Director Ryan previously talked about the Tempe St.
18 Luke's and the University Hospital, outside hospital contracts?

19 A. Yes.

20 Q. And I believe he used the expression that they fell by the
21 wayside. Have you made any efforts to reopen discussions with
22 either hospital to, again, provide specialty services and
23 hospitalization for patients?

03:44PM

24 A. I know conversation has been had with Florence Hospital
25 regarding the potential of opening up services there. But

03:44PM

1 nothing has come of that at this point.

2 Q. You said Florence Hospital?

3 A. Yes.

4 Q. Is that Florence Anthem?

5 A. Yes.

03:44PM

6 Q. What about Tempe St. Luke's?

7 A. No.

8 Q. What about University Hospital?

9 A. No.

10 MS. KENDRICK: Your Honor, just one housekeeping
11 thing. I need to move plaintiffs' Exhibit 206 into evidence.
12 It was used yesterday with Mr. Pratt, and I did not ask to move
13 it in.

03:44PM

14 THE COURT: Any objection to 206?

15 MR. BOJANOWSKI: May I have a moment?

03:45PM

16 THE COURT: Of course. That's --

17 MS. KENDRICK: Plaintiffs' exhibit.

18 THE COURT: Thank you.

19 MR. STRUCK: Your Honor, this is my e-mail to the
20 Court. I just don't think it's an appropriate exhibit.

03:46PM

21 THE COURT: Why?

22 MR. STRUCK: Well, I guess it contains hearsay, I
23 suppose.

24 THE COURT: That's an unusual argument to make.

25 MR. STRUCK: Well, it's also unusual to have

03:46PM

1 correspondence from defense counsel or plaintiffs' counsel as
2 an exhibit.

3 THE COURT: Not subject to any privilege, any kind of
4 exception. It's a communication with the Court. Why shouldn't
5 it be something that's part of the record? I think the
6 presumption is if you send something to the Court it can become
7 part of the record. The objection is overruled.

03:46PM

8 You can call your next witness out of order if you
9 like or do the redirect of Mr. Pratt, whichever you prefer.

10 MS. KENDRICK: Your Honor, are you going to admit
11 Exhibit --

03:47PM

12 THE COURT: Yes. The objection is overruled. It will
13 be received.

14 MS. KENDRICK: Thank you.

15 MS. LOVE: Your Honor, defendants call Division
16 Director Carson McWilliams.

03:47PM

17 THE COURT: You are spared for the day, Mr. Pratt.
18 Thank you very much.

19 MS. LOVE: Your Honor, he's coming in the courtroom.

20 THE COURT: Thank you very much for your patience,
21 sir. I oftentimes am so very pleased that when people have
22 been put charitably on ice in that outer room that they are
23 still there when we look for them. It's a demonstration to
24 people's willingness to understand what we do here is time
25 consuming and full of delay and frustration but is important

03:48PM

03:48PM

1 and necessary. So I thank you for your patience, sir.

2 You may step forward to the well of the court to be
3 right before the clerk so she may administer the oath.

4 (The witness was sworn.)

5 THE MAGISTRATE CLERK: Thank you. Please have a seat. 03:48PM

6 CARSON MCWILLIAMS,
7 called as a witness herein, having been duly sworn, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. LOVE:

11 Q. Will you please state your name for the record?

12 A. My name is Carson McWilliams.

13 Q. Who is your employer?

14 A. The Arizona Department of Corrections.

15 Q. What is your current title? 03:49PM

16 A. I'm the Division Director in charge of prison operations.

17 Q. And Division Director McWilliams, you have testified here
18 in court in the *Parsons versus Ryan* case previously, is that
19 correct?

20 A. Yes, I have. 03:49PM

21 Q. And what -- remind us please, quickly, what is your chain
22 of command?

23 A. I report to the director, Mr. Ryan.

24 Q. And are there others that directly report to you?

25 A. Yes. I have regional directors, four of those; I also have 03:49PM

1 10 wardens that report to me through the regional directors;
2 and then about 48 deputy wardens.

3 Q. The 10 wardens that report to you, are those wardens of
4 state-run prison complexes in the state of Arizona?

5 A. Yes, they are. 03:50PM

6 Q. And those are complexes that are subject to the stipulation
7 in this case?

8 A. That is correct.

9 Q. You also mentioned that there are four regional directors?

10 A. Yes, there are. 03:50PM

11 Q. And how many regional directors supervise the state-run
12 complexes?

13 A. Two.

14 Q. And those two regional directors are who?

15 A. Ernie Trujillo covers the northern region, and Joe Profiri
16 the southern region. 03:50PM

17 Q. If you could turn to Exhibit 101, which is in the stack in
18 front of you. Take a look at that for us if you could.

19 A. Yes.

20 Q. Do you recognize the document that is contained in
21 Defendants' Exhibit 101, which is already admitted into
22 evidence? 03:50PM

23 A. Yes, I do.

24 Q. What do you understand this document to be?

25 A. It is a court order that addresses some performance 03:51PM

1 measures, I think 11 to be exact, that we are to comply with
2 the order in this document.

3 Q. And do you see at the top of Page 1 of Exhibit Number 101
4 that there's a stamp at the top that says filed 10-10 of '17?

5 A. Yes, I do.

03:51PM

6 Q. Did you receive a copy of this order in your capacity as
7 division director close in time to the filing date of October
8 10th of 2017?

9 A. Yes, I did.

10 Q. Is this an order that you personally had discussions with
11 Director Charles Ryan about?

03:51PM

12 A. Yes, I did.

13 Q. Did you also have discussions with Richard Pratt?

14 A. Yes, I did.

15 Q. And do you know who Richard Pratt is?

03:52PM

16 A. Yes, I do.

17 Q. And is he -- are you aware that he is also a defendant in
18 this litigation?

19 A. Yes, I am.

20 Q. If you could turn to Page 4 of Exhibit Number 101. And I
21 want to refer you to the last sentence on Page 4.

03:52PM

22 A. Yes.

23 Q. The last sentence of Page 4 reads, "If the Court finds
24 clear and convincing evidence that defendants have failed to
25 take all reasonable steps to comply with this order, the Court

03:52PM

1 shall impose civil contempt sanctions upon" -- or I'm sorry --
2 "civil contempt sanctions on defendants."

3 Did I read that correctly?

4 A. Yes, you did.

5 Q. And when you received a copy of this order on or about
6 October 10th of 2017, were you aware of the import of this last
7 sentence of the Court's order?

03:52PM

8 A. Yes, I was.

9 Q. In your capacity as division director, did you receive any
10 instruction or orders from either defendants to take any action
11 on the operations side of the functioning of the Arizona
12 Department of Corrections' 10 state-run complexes to comply
13 with this order?

03:53PM

14 A. Yes, I did.

15 Q. In what respect?

03:53PM

16 A. The main focus was about PM 35 because we had already been
17 working on a project with that. But there was discussion about
18 the entire order and all of the measures.

19 Q. In your capacity as a division director and supervising the
20 two regional operations directors that oversee the 10 state-run
21 complexes as well as the 10 wardens of those state-run
22 complexes, did you ever direct anyone under your supervision to
23 take action to violate this court order?

03:53PM

24 A. No, I did not.

25 Q. Or to ignore this court order?

03:54PM

1 A. No, I did not.

2 Q. In your capacity as division director, did anybody in the
3 Arizona Department of Corrections' organization instruct you to
4 disobey this court order?

5 A. No.

03:54PM

6 Q. Or in any respect ignore this court order?

7 A. No.

8 Q. You referred to Performance Measure 35. Can you tell us
9 what your understanding of Performance Measure 35 is?

10 A. It's basically about the transportation of inmates that
11 have prescribed medications to them and ensuring those
12 medications are transported with them, and that they receive
13 the dose on time of the next dose of whatever that dose would
14 be. So that would be in the same day that the transport
15 happened.

03:54PM

03:54PM

16 Q. Is it your understanding that the Court's October 10th,
17 2017 order specifically pertained to Performance Measure 35?

18 A. Yes, I did.

19 Q. And do you know how many complexes were at issue in the
20 Court's October 2017 order as to Performance Measure 35?

03:55PM

21 A. I believe there was four. All the complexes have the
22 transportation order, but there was four main ones.

23 Q. I believe, and please correct me if I'm wrong, a few
24 minutes ago in your testimony with reference to Performance
25 Measure 35, you mentioned that you started a process in the

03:55PM

1 summer prior to the Court's October order.

2 A. Yes, we did.

3 Q. Please tell us what was the catalyst that started a process
4 pertaining to Performance Measure 35 in the summer of 2017?

5 A. Well, I believe it was in about the middle of the summer,
6 there was a conversation that Mr. Pratt had with Director Ryan.
7 He immediately called me on the phone and talked to me about
8 maybe some things that we could do to improve the compliance
9 with transportation of the medications. So we set up a meeting
10 with transportation sergeants that we had with -- we met with
11 them first, operations staff, and then a small committee was
12 formed that Mr. Pratt facilitated. And we discussed some ways
13 that we could do things that might enhance that compliance.

03:55PM

03:56PM

14 Q. Do you remember who -- what the makeup was of that
15 committee that you speak of?

03:56PM

16 A. I wasn't on the committee, but I believe it was some key
17 transportation sergeants that had a lot of experience and had
18 some knowledge of things; it was Mr. Pratt; I believe there was
19 someone from Corizon staff on it; and maybe a couple other
20 people from either Corizon or Mr. Pratt's office.

03:57PM

21 Q. Did you receive any reports from the committee as to their
22 activities or the information that they were gathering and
23 assessing?

24 A. Yes. We met with those same sergeants a couple of times,
25 and they would give us feedback on some things. And there were

03:57PM

1 some plans made to modify some of our transport practices.

2 Q. Do you recall what the challenges or concerns that were
3 being looked into by the committee in the summer of 2017
4 related to the medication transfer issue?

5 A. Well, there's several of them. Probably the first one
6 would be the volume of transports. It's extremely high.

03:57PM

7 Another one would be the process itself of -- there was
8 multiple medications that were involved in this, and some of

9 them were KOP and some of them were DOT. And some of the
10 medications, either the inmate had quit using those or they

03:58PM

11 had -- sometimes the inmates had traded them off on the yard.

12 There was a lot of little issues with it that came into play as
13 we looked into these things.

14 Q. When you speak of the volume of transports, do you have

15 knowledge of, on a broad scale, how many intra-facility

03:58PM

16 transports are completed by the Arizona Department of

17 Corrections on an annual basis?

18 A. On an annual basis it's around 30,000.

19 Q. And do you have a sense of what the statistics are

20 presently as to how many statewide intra-facility transports

03:58PM

21 take place on a weekly basis?

22 A. On a weekly it's a little over 600.

23 THE COURT: Can I ask a question, Ms. Love, just so

24 that I'm not missing something? Is the 30,000 number

25 reflecting only people who go from one facility to another and

03:59PM

1 exclusive of people who are arriving or are leaving DOC
2 custody?

3 THE WITNESS: That number would be transfers inside
4 our system from one complex to another. It wouldn't account
5 for inside a complex or Alhambra transports. 03:59PM

6 THE COURT: So just to make sure I understood, I'm
7 wanting to make sure this number, the 30,000 number, is only
8 for people who are going on the place they leave, DOC custody,
9 to the place they arrive, DOC custody. It's not people who are
10 leaving DOC custody and going outside of DOC custody and it's 03:59PM
11 not people who are coming from outside DOC custody and going
12 into DOC custody.

13 THE WITNESS: No. It's just the movement from complex
14 to complex that they are already incarcerated. It's that group
15 of inmates. 04:00PM

16 THE COURT: So these are people who are being -- is
17 the right word being transferred to another complex?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 BY MS. LOVE: 04:00PM

21 Q. And what is the reason or reasons that inmates may be
22 transported from one state-run complex to another?

23 A. Well, there's a lot of reasons. Some of them are based on
24 classification and behavior. Some of them are based on their
25 own requests of, like, for protection or something along those 04:00PM

1 lines that we have to move people to alt placement to try them
2 in another facility. Some of them are balancing out just the
3 system itself to ensure that we keep racial parity and things
4 like that on yards. Some of it could be for some type of
5 special programming. And then some of it is just based on the
6 classification changes themselves.

04:01PM

7 Q. So as an inmate's custody level may change, for instance,
8 an inmate may be close custody and is downgraded to medium
9 custody, that may require a complex change?

10 A. Yes. In most cases it would. It wouldn't always, but it
11 would in most cases.

04:01PM

12 Q. You also mentioned that you, in the summer of 2017 -- and
13 when I say "you," I mean you and the committee -- looking at
14 the issue of, you said, KOPs and DOTs. Can you explain for us
15 what you meant by that?

04:01PM

16 A. Well, there was some issues with medication that either
17 expires or inmates traded away. The KOP meds, because once an
18 inmate receives those, it's not like we track it every day to
19 make sure they are using the medication. So some drugs are
20 very popular on the yards. Sometimes medications are sold or
21 bartered or traded, you know. So they are used in different
22 ways than maybe what they are prescribed to use.

04:02PM

23 And then some of the medications, too, we found they
24 were doing prescriptions for things like medicated shampoo for
25 dandruff or lip balm, there were things like that that were

04:02PM

1 actually getting recorded as a prescription. So we had some
2 discussion about why we would do that when it's
3 over-the-counter type medication. Another example would be
4 aspirin.

5 Q. So am I understanding your explanation to be a concern
6 about what, as you are looking at this medication transport
7 issue, what kind of medications may go with the inmate on
8 person and does that pose as security risk?

04:02PM

9 A. No, not necessarily a security risk. But it was just
10 making sure verifying, first of all, that they had the
11 medication they were supposed to have. That was part of that
12 issue. Because before we modified some things, we wouldn't
13 have known -- medication would have been, you know, accounted
14 for when they did the inventory. But it wouldn't be done in a
15 way where you would go through a list of medication to ensure
16 that all the medications they have been prescribed for
17 keep-on-person are there.

04:03PM

04:03PM

18 Q. So you are looking at, then, if I'm understanding your
19 testimony correctly, a process by which you would look to see
20 how do we look and see what medications have been prescribed to
21 this particular inmate, do they have them in their possession
22 when they are leaving, and are they still going to have them in
23 their possession when they are arriving at their new complex?

04:03PM

24 A. Yes. That's the process we developed so we could tell
25 that, even if it's expired or not. Because if it's expired

04:04PM

1 that medication is removed from the inmate's possession.

2 Q. Why isn't expired medication removed from an inmate's
3 possession?

4 A. Because it's expired. It's not a medication that you
5 should be using if it has an expiration date on it. 04:04PM

6 Q. Was there a change in the summer of 2017 as to physically
7 how and where the medications were transported when an inmate
8 was transported, for instance, were they -- were medications
9 loaded into a certain part of the van and then delivered to the
10 receiving complex? Did they go with the inmate? How did that
11 work prior? 04:04PM

12 A. Normally if you had a lot of prescriptions, a lot of
13 keep-on-person ones, the bulk of that would go into your
14 property inventory. You would keep a small amount of that
15 which would be for the use on that transport. If you had to
16 take that medication you were able to carry that with you. But
17 the bulk of the medication would be put into your property. 04:05PM

18 Q. Division Director McWilliams, if you could take a look at
19 Exhibit Number 1, which should be in that stack in front of
20 you. 04:05PM

21 A. Yes.

22 Q. Do you recognize the document that is contained in
23 defendants' Exhibit Number 1?

24 A. Yes, I do.

25 Q. What is it? 04:05PM

1 A. This was a memo that came out from a meeting that was held
2 as a result of how we started doing the meetings with the
3 sergeants, and then Richard did some meetings with them. And
4 then there was a big meeting with all the State and this
5 meeting was a result of that that outlined a process to
6 transfer medication with the inmate.

04:06PM

7 Q. And was this process for inmate medication transfers
8 directly related to Performance Measure 35 at issue in this
9 case?

10 A. Yes, it was.

04:06PM

11 Q. Is this a memorandum that you reviewed and approved as
12 division director prior to it being sent from the Northern
13 Region Operations Director Ernie Trujillo and Southern Region
14 Operations Director Joe Profiri before it was sent to the
15 wardens?

04:06PM

16 A. Yes, it is.

17 Q. Was this a memorandum that was approved by you, generated
18 and approved for delivery to the wardens in the normal course
19 of operations of the Arizona Department of Corrections?

20 A. Yes, it was.

04:06PM

21 Q. And at your direction?

22 A. Yes.

23 MS. LOVE: Defendants move to admit.

24 THE COURT: Any objection?

25 MS. EIDENBACH: No objection, Your Honor.

04:06PM

1 THE COURT: It is received.

2 BY MS. LOVE:

3 Q. In this memorandum it appears on Page 1 that there is a
4 process that is outlined for departure. Do you see that?

5 A. Yes, I do. 04:07PM

6 Q. And can you explain for us what the implementation of this
7 memorandum on August 4th of 2017, what the departure process
8 was for the medication transfers?

9 A. Kind of a basic part of it was first of all, you had to
10 verify that they were being transferred. That's done on a 71
11 screen on the AIMS computer. Then there's an order that's put
12 out where the KOP medication, first you have to give the
13 officers the direction of who is going to be rolled up. A
14 rollup is a prison term for doing an inventory on an inmate.

15 Then when they did the inventory they would give the 04:08PM
16 inmate a plastic bag. They would put the keep-on-person
17 medication in the plastic bag. The inmate would be instructed
18 to keep possession of the bag. Then when they went to the
19 central intake area for departure then that's when it would be
20 verified by the nursing staff or the Corizon staff. 04:08PM

21 Q. Let me stop you there. As the inmate's property is rolled
22 up for transport, does the property but for the plastic bag
23 with the medications go to a different location?

24 A. No. It all goes to the same location. It's all
25 transported on the same bus, van. 04:08PM

1 Q. But the medications the inmate is given, or the inmate's
2 medications are put in a bag that is carried by the inmate
3 himself?

4 A. Yes, it is.

5 THE COURT: Only the keep-on-person medication, right? 04:08PM

6 THE WITNESS: Right. The DOT medications are a
7 separate issue. But yes. Yes.

8 BY MS. LOVE:

9 Q. So let's do it this way. Let's talk about the departure
10 process for the KOP medications and then we'll talk separately 04:09PM
11 about the DOT.

12 A. Then when they got to the intake, central intake, then the
13 medical staff would verify that they did have those
14 keep-on-person medications with them and the inmate would still
15 keep possession of them. They would actually verify it, 04:09PM
16 though, through their list of medications that were prescribed.

17 And then once that was done, they did a medical
18 transfer sheet that where they listed everything on that so
19 when it arrived they could verify it on the other end.

20 Q. Are you aware of what would happen from the Corizon side if 04:09PM
21 an inmate goes with his plastic bag, hypothetically, and
22 there's one KOP medication in there, is the Corizon person, to
23 your knowledge, looking to see, well, should this inmate have,
24 based on their medical records, have two different kinds of KOP
25 medications and where is that second? 04:10PM

1 A. Yes. Because they have a list of whatever the medications
2 are. So they are verifying that the medications that they have
3 on their person are the same ones that they have been
4 prescribed that would be in that -- wouldn't be outdated.

5 If -- and there's a process to that. So, you know, if they are
6 there then there's no issue. There's no discrepancy. If
7 there's a discrepancy, that has to be documented and then the
8 receiving facility gets contacted so that they know there's an
9 issue with it so action can be taken to correct that.

04:10PM

10 Q. When you say a discrepancy, do you mean a situation where,
11 for instance, an inmate's records list that he has two KOPs, he
12 only shows up with his plastic bag of one KOP, then is Corizon
13 looking to see, hey, can we get that second KOP to him before
14 he leaves, or is that done or the receiving end? How does that
15 work?

04:10PM

04:11PM

16 MS. EIDENBACH: Objection, Your Honor. Leading.
17 Counsel is testifying.

18 THE COURT: Hold on just a second.

19 MS. EIDENBACH: Sure. Sorry, Your Honor.

20 THE COURT: Overruled.

04:11PM

21 THE WITNESS: If it was a medication that was needed,
22 then yes, that would -- they would try to get it before they
23 left if they had to take a dose of it. If it was something
24 that wasn't that necessary, then they would go to the receiving
25 area and get it there.

04:11PM

1 BY MS. LOVE:

2 Q. And when you say "the receiving area," do you mean --

3 A. The next -- the institution they are being transferred to,
4 yeah.

5 Q. What is the next step in the process after Corizon verifies
6 the KOP medications for a particular inmate and checks to see
7 are the KOPs prescribed to the inmate in the possession of the
8 inmate?

04:11PM

9 A. Then they have to verify the DOT medications. The DOT
10 medications, the inmate doesn't have possession of those.
11 Those medications are brought by medical to the intake area.
12 They are verified that they are the medications that have been
13 prescribed. Then they are placed into a bin that all the
14 medications are put into so that -- along with the medication
15 transfer sheets so that the receiving institution has a record
16 of that verification, plus the inmate and the medical person
17 both sign their names to that, to the -- there's a transfer
18 sheet that -- it's a labeling sheet that they sign.

04:12PM

04:12PM

19 Q. And then the bin that you are speaking of that contains the
20 DOT medications, is that placed on the transport vehicle?

04:13PM

21 A. Yes, it is.

22 Q. And is that in a particular location, secure location? How
23 does that work?

24 A. Well, normally those things are -- in a bus, let's say, has
25 a compartment area where luggage and stuff is placed. That's

04:13PM

1 where inmate property is placed as well as that bin.

2 Q. To you know whether --

3 A. One other thing, too, it's also red tagged which is a
4 process we use to seal it so that you can tell if it's broken
5 open because the red tag has to be broken. And it has a number
6 on it, the red tag does. That number is put on the paperwork
7 so that you can verify that that tag hasn't been tampered with.

04:13PM

8 Q. Is this tag specific to all DOT medications that are going
9 on that particular transport or red tagged to the specific
10 inmate?

04:13PM

11 A. No. It's for all the medications in one bin. And if you
12 had to, I guess there could be more than one bin. But one bin
13 normally can handle that.

14 Q. Do you know how, within the bin, is it identified that a
15 certain DOT medication is for a particular inmate?

04:14PM

16 A. Yes. Each one has one of these med transfer sheets. Those
17 are all recorded on it. That's placed with that medication.
18 It's in like a same thing, a bag or an area right there in the
19 bin itself so you have those medications singled out.

20 Q. When -- before an inmate leaves the sending facility, do
21 you know whether or not there is documentation that attests to
22 whether or not the inmate agrees as to whether or not the
23 medications are going with him, for instance, for KOP
24 medications?

04:14PM

25 A. Well, yeah, the inmate signs for both the KOPs and the DOT

04:14PM

1 medications as well as the medical staff person. If the inmate
2 refuses then a third person, another staff member, would sign
3 which would probably be the security staff member that's there.

4 Q. So is this a situation where as the inmate is being
5 processed out of a facility, he is physically sitting with or
6 face-to-face with a Corizon medical staff member who is going
7 through this medication verification process?

04:15PM

8 A. Yes, they are.

9 Q. And is this something you have observed yourself personally
10 occur?

04:15PM

11 A. Yes. I have seen it happen before.

12 Q. What if an inmate declines to sign paperwork attesting to
13 whether or not medications are present and accounted for for
14 the transport?

15 A. We handle that like any refuse to sign something. Another
16 person, another staff member signs, so two staff members would
17 sign and you would just write "refuse to sign" on the line.

04:15PM

18 Q. If there is a discrepancy in the hypothetical that I was
19 giving you such that, for instance, an inmate's records show
20 that he has two KOPs but as he's being processed out there's
21 only one KOP available for him and in the bag, is there any
22 documentation that memorializes this discrepancy?

04:16PM

23 A. Yes. There would be an information report written. The
24 inmate would also be asked what happened to it. Let's say it
25 was inventoried the night before, and it was there because it's

04:16PM

1 on the inventory that it was there. So they did verify that
2 part because the officer also verifies it when they do the
3 inventory. You would also ask the inmate what happened to the
4 medication, and if the inmate says, I threw it away, or I gave
5 it to Inmate Smith, they would be held accountable for that
6 through a disciplinary ticket.

04:17PM

7 Q. And what is the disciplinary issue with either of those two
8 scenarios that you just shared?

9 A. Why we would do that?

10 Q. Yes.

04:17PM

11 A. To -- the main reason would be to try to recoup the money
12 that the medication cost. They are going to be charged
13 restitution for it because it's destruction of state property.

14 Q. And are inmates permitted to give away their medications to
15 other persons?

04:17PM

16 A. No, they are not.

17 Q. So then when the inmates are physically put on to the
18 transport vehicle, the DOT medications stay secure in the bin,
19 correct?

20 A. Yes, they do.

04:17PM

21 Q. And then the inmates, their KOP medications, do they have
22 them literally in their hands while they are on the transport
23 bus?

24 A. Yes, they do.

25 Q. And what is the process, then, on the receiving end for

04:18PM

1 verification that an inmate has the medications that he has
2 been prescribed available to him DOT and KOP?

3 A. It's pretty much the same process. When they arrive at the
4 intake area there is a medical staff member there. They are
5 taken to that area where they check the KOPs to see if they
6 still have them, verify the amount, or the number of
7 prescriptions, and then the DOT medications are verified in the
8 bin itself.

04:18PM

9 So that's all done at the receiving, so if there's
10 some type of discrepancy that wasn't caught on the front end
11 would get caught on the back end to ensure that that medication
12 could be purchased, maybe they have it at the pharmacy in
13 stock, and then administered in a timely manner.

04:18PM

14 Q. Are there processes in place as of the summer of 2017 and
15 with this memorandum whereby if an inmate comes to the
16 receiving facility is missing a medication, and a medication is
17 not available in stock, that there's action taken to provide
18 the inmate with the medication?

04:19PM

19 A. Yes, there is action taken. You can go to a local pharmacy
20 and purchase it. It can even be delivered through a pharmacy.

04:19PM

21 Q. Are you aware of whether that has occurred?

22 A. Yes, it has occurred.

23 Q. As you walked us through this detailed process in place as
24 of September -- or I'm sorry -- as of August of 2017, can you
25 tell us how this process was different than prior?

04:20PM

1 A. Well, they always, you know, accounted for the medication
2 as far as like the KOPs, when you did an inventory you would
3 list the inventory of some KOPs. You might not know what the
4 medication was. I mean, a lot of our officers aren't
5 well-versed in medications. So that would be one thing,
6 because now there's actually a piece of paper that medical
7 fills out that tells you the name of the medication. So you
8 can actually verify that that is the right medication. Because
9 you don't know if that inmate is prescribed that medication or
10 not prior to this. Now you would know it. So you just know
11 they had five bottles of pills or whatever.

04:20PM

04:20PM

12 So this system actually identifies everything
13 individually by the name of what it is, and then so that
14 officer can tell that they have the medications that they are
15 supposed to have.

04:21PM

16 Q. Division Director, if you could look at Exhibit Number 2,
17 that should be in front of you. And after you have had an
18 opportunity to look at the document, please let me know if you
19 recognize what it is.

20 A. Yeah. I recognize it. It's DI-361.

04:21PM

21 Q. Exhibit Number 2?

22 A. Yes.

23 MS. LOVE: May I approach, Your Honor?

24 THE COURT: You may.

25 BY MS. LOVE:

04:21PM

1 Q. My mistake. Could you please look at Exhibit Number 3.

2 A. Yes. I recognize this.

3 Q. And what is Exhibit Number 3?

4 A. It's the labels. This is the labeling and signature pages
5 that were putting for the meds and this is actually put onto
6 the meds so that they can identify those. And it's got a place
7 for a signature for the inmate and it also has one for a staff
8 member.

04:22PM

9 Q. And this is for the departure process?

10 A. Yes. It works for both KOP and for DOT meds.

04:22PM

11 Q. Do you see at the top of the labels it says, "Labels for
12 interim use." Do you know what that refers to?

13 A. When we developed this, we weren't sure how this might
14 evolve but it was for a period of time. It was something we
15 had to do right then for that period of time, but it wasn't
16 permanent.

04:23PM

17 Q. Was this during the period of time of the summer of 2017
18 coinciding with the August memorandum regarding the process?

19 A. Yes.

20 Q. And if you could then also take a look at Exhibit Number 4
21 and tell me if you recognize this document.

04:23PM

22 A. Yes.

23 Q. What is this?

24 A. It is also labels for DOT meds. First one was KOP.

25 Q. And was this -- are these -- were these also labels used

04:23PM

1 for interim use in the summer of 2017 as the system was being
2 developed?

3 A. Yes. It was developed that way, yes.

4 MS. LOVE: Defendants move to admit Exhibits 3 and 4.

5 THE COURT: Any objection?

04:24PM

6 MS. EIDENBACH: No objection, Your Honor.

7 THE COURT: Exhibits 3 and 4 are received.

8 Ms. Love, what I contemplate is we'll go until 4:45

9 and then we'll take up the other issues that we need to do.

10 Thank you.

04:24PM

11 BY MS. LOVE:

12 Q. If you will now take a look at Exhibit Number 2 for me.

13 A. Yes.

14 Q. And I believe you previously testified when I was making a

15 mistake in exhibit order thank you recognized this document at

04:24PM

16 Exhibit Number 2?

17 A. Yes, I do. It's a director's instruction that was written

18 about the medical -- medication transfer process.

19 Q. Is this Director's Instruction 361 inmate medication

20 transfer process?

04:24PM

21 A. Yes, it is.

22 Q. Dated October 31st, 2017?

23 A. Correct.

24 Q. And at the top it says from Charles L. Ryan?

25 A. Yes.

04:25PM

1 Q. And that's Director Ryan?

2 A. Yes, it is.

3 Q. And the to line says "Distribution." Do you see that?

4 A. Yes, I do.

5 Q. What does distribution mean?

04:25PM

6 A. Who it's going to.

7 Q. And is distribution a code word for a certain category of
8 people within the Arizona Department of Corrections?

9 A. Well, it's going basically, this particular DI goes out to
10 everybody. It's part of our director instructions. We have
11 several of those. And it goes out to everybody in the
12 Department. When it's put out it goes to every complex, every
13 unit.

04:25PM

14 Q. And do you know the process by which director's
15 instructions are put out to quote, unquote, "everyone for
16 distribution"?

04:25PM

17 MS. EIDENBACH: Objection, Your Honor. Relevance. We
18 don't really know the exact process of distribution.

19 THE COURT: Overruled. We'll hear where it goes.

20 THE WITNESS: Yeah. We have a policy unit. Once the
21 director signs one of these then it goes back to the policy
22 unite and then they put out an electronic notice to all the
23 prisons and it has this attached to it. And it says this DI
24 has been authorized by the director, and then it's
25 responsibility of the people in the field to go over that with

04:26PM

04:26PM

1 staff to make sure that staff are aware of what's going on or
2 any changes. It goes to numerous people.

3 BY MS. LOVE:

4 Q. And previously in this case, we have heard testimony that
5 Correctional Officer 2, so Correctional Officer 2 likely will
6 not have an e-mail account. Is that correct?

04:26PM

7 A. Well, it depends on what you do. Everybody that's got an
8 e-mail will get this. Some CO2s have it, like accountability
9 officers which would be a very important one in this since they
10 have an integral part in it. They would get it. Property
11 staff would. A lot of the support service staff would, because
12 they have e-mail accounts. And then, of course, all your
13 program staff do, your teachers, chaplains, administrators.
14 That list is quite lengthy.

04:27PM

15 Q. What I'm interested in is if this is a DI that's necessary
16 to go to all security personnel including CO2s, how does
17 information get drilled down such as we have a new DI and
18 here's our new processes to someone who may not have an e-mail
19 account?

04:27PM

20 A. We do that different ways. One is a briefing. You go over
21 all policy issues in briefing and you talk about those things
22 with the staff, which are officers. It also gets put on up
23 on -- we have electronic briefing boards that are in the
24 briefing rooms. And this kind of information is put on those.
25 You know, most staff come to work for a briefing a little bit

04:27PM

04:28PM

1 early. They don't get there right at the moment when the shift
2 starts. So they might be in that briefing room for 15 minutes
3 before the shift starts. That scrolls constantly and you can
4 read that information.

5 We also have these electronic bulletin boards in the 04:28PM
6 entryways of our custody -- a lot of our custody units that you
7 can read while you are standing in line to get checked through
8 at a scanner, an entry point.

9 So we have those things, plus you also have meeting.
10 Deputy wardens have meetings with officers; chiefs of security 04:28PM
11 have meetings with the officers; wardens have meetings with the
12 officers and they talk about all those things.

13 Q. Is it your expectation as the division director who
14 supervises the 10 state-run facility wardens and the 40-plus
15 deputy wardens that when a director's instruction is released 04:29PM
16 for distribution that that command level staff drills down this
17 information to the necessary personnel who need to know this,
18 implement this, and abide by it?

19 A. Yes, I do.

20 Q. Did you, in your capacity as division director, review and, 04:29PM
21 for your purposes, approve Director Instruction 361 before it
22 went to Director Ryan for final approval?

23 A. Yes, I did.

24 Q. And Director's Instructions pertaining to operations are
25 documents that are generated in the normal course of operations 04:29PM

1 for the Arizona Department of Corrections?

2 A. Yes, they are.

3 MS. LOVE: Defendants move to admit.

4 THE COURT: Any objection?

5 MS. EIDENBACH: No objection, Your Honor.

04:29PM

6 THE COURT: And this is number --

7 MS. LOVE: This is defendants' Exhibit 2.

8 THE COURT: Thank you. 2 is received.

9 BY MS. LOVE:

10 Q. Does Director Instruction 361 dated October 31st of 2017
11 encompass the processes that were set forth in Exhibit Number
12 1, which was the August 2017 memorandum regarding the
13 medication transfer process?

04:30PM

14 A. Yes, it does.

15 Q. Does DI-361, to your knowledge, change any of the departure
16 and arrival processes that you have previously testified to
17 here today?

04:30PM

18 A. Not any of the basic ones. I think it elaborates a little
19 more on some things. It doesn't change any of the basic issues
20 with it, no.

04:30PM

21 Q. If you turn to Page 4 of Exhibit Number 2, at the top there
22 is a Section 4.0, and it says, "Unscheduled/After Hours
23 Transport/Delayed Arrival." Do you see that?

24 A. Yes, I do.

25 Q. To your knowledge, is that a section that was -- that

04:31PM

1 appears here in this DI but was not present in the August 2017
2 memorandum?

3 A. Yes. It's an addition, yes.

4 Q. Could you please explain for us what the addition was?

5 A. Well, we found that we were having some issues with
6 after-hour transports, and a lot of that is, you know, the
7 staffing and there's several little issues with it. So we
8 thought it would be better if we structured that a little
9 differently, made it more of a command decision to move
10 somebody after hours and to reduce this, reduce the after hours
11 transports themselves. We have actually narrowed this down
12 even more in the past month, month and a half.

04:31PM

04:31PM

13 Q. And when you say that this unscheduled or after hours
14 transports and delayed arrivals went more to command staff,
15 what do you mean by that?

04:32PM

16 A. Well, what we were trying to make sure didn't happen was
17 someone authorized some type of after hours transport and
18 everybody wasn't aware of it, to make sure that we were
19 following up on things so that we wouldn't -- no one would slip
20 through the cracks. So the level of who would either authorize
21 it or who would be involved in making that decision was just at
22 a higher level. Because your transports ordinarily are made
23 through central office, but that only happens during 8 to 5
24 hours. Everything after that is made in a different way.

04:32PM

25 Q. Were these additional processes for the unscheduled after

04:33PM

1 hours transports put into place so that whether on the
2 departure or receiving end the necessary personnel were
3 available to go through the departure and arrival process to
4 ensure medications are delivered?

5 A. Yes, so that process wouldn't slip through the cracks so
6 that they would have -- everybody's got to go through the
7 designated areas, but you also have to ensure that everything
8 is accounted for. So, yes, the medication would be something
9 that would have to be looked at and to ensure that it was
10 transported with the inmate.

04:33PM

04:33PM

11 Q. And do the unscheduled or after hours transports require
12 approval of a warden or a regional operations director?

13 A. Yes, they do.

14 Q. And why is that?

15 A. Just to take it to that level where it's at a high level
16 organization, but it also does something a little simpler than
17 that. It reduces them dramatically unless it's an emergency.

04:33PM

18 Q. If you would look at Page 5 of Exhibit 2. At the top
19 there's Section 5.0, distribution lists. Is this a subject
20 matter area that was added to the DI that was not present in
21 the August 2017 memorandum?

04:34PM

22 A. Yes, because we wanted to use the shared drive and -- yes.
23 This is another addition just making sure that we had that
24 bridge between the contract staff and the operations staff.

25 Q. When you say "use the shared drive" what do you mean?

04:34PM

1 A. Well, everything is on that drive. So let's say you had an
2 issue with some type of medication there would be two things
3 that would be done: One of them would be you would send
4 something electronic to the receiving area. You would also
5 follow up with a phone call. The list for transfers are on
6 that drive so that other people can look at it. The
7 accountability officer has to see it. The medical staff need
8 to see that so they know who the transfers are because you have
9 to make sure you have the right people on the transfer list.
10 So that now is something everybody can use.

04:35PM

04:35PM

11 Q. And with the implementation of the DI, were there
12 additional documentation requirements as to daily operations at
13 either the departure or arriving facility to document what
14 transports were happening that day and whether the medications
15 arrived?

04:35PM

16 A. Well, the transfer lists normally occur, they can occur a
17 couple of days out. But before the transfer actually happens
18 we have to have some type of time lapse in there to get
19 everything done.

20 But, yes, so everyone knows to look at that but you
21 also have to verify that again, because sometimes those change.
22 So you have to verify it again on the day of, on the
23 information itself. I mean, the medication list, that's how
24 Corizon staff would get the list of people to send to the
25 officers on shift to do the roll-ups, would be by looking at

04:36PM

04:36PM

1 this list to see who was on the transfer list.

2 Q. And you testified previously, I believe, that most
3 transports come out of the central office. Did I understand
4 your testimony correctly?

5 A. Yes, they do.

04:36PM

6 Q. What do you mean by "most transports come out of the
7 central office"?

8 A. Well, the classification and movement, daily movement, is
9 generated and controlled by central office. After hour things
10 are either emergencies or things that occur that dynamics have
11 changed with someone, let's say, requesting protection, things
12 like that that happen outside of those. But regular movement
13 where it's a planned transport where someone decides that
14 inmate X is going to this institution, that is all planned in
15 advance.

04:37PM

04:37PM

16 Q. And is there one person who holds the position that is the
17 coordinator of transport statewide on a daily basis?

18 A. In the central office there is, yes.

19 Q. And what is that position entitled?

20 A. Transportation coordinator.

04:37PM

21 Q. Do you know the name of the person?

22 A. Yes, I do. You want me to say it?

23 Q. Yes.

24 A. Christine Harkins.

25 Q. And how far in advance are the transportation lists

04:37PM

1 created? Really what I'm asking is, what kind of lead time
2 does a departure facility have knowing who is going to be
3 transferred when and how many do we have going?

4 A. Normally, it's two days. There could be exceptions to that
5 if you were doing some type of massive mass movement, but
6 normally it's two days. 04:38PM

7 Q. In conjunction with the DI that we have been speaking about
8 today, were any new positions created within the Department of
9 Corrections to facilitate the DI?

10 A. Yes, there was. 04:38PM

11 Q. What was the position that was created?

12 A. We created a position down that we placed in Tucson that
13 oversees more of the -- they don't develop the movement. They
14 oversee the process. So they would get the move list just like
15 anyone else, and then they would follow up with -- any type of
16 discrepancy that happens with a medication transfer goes into
17 this office and this person helps coordinate trying to correct
18 it. 04:39PM

19 So they deal with the transportation sergeants; they
20 deal with the deputy wardens; they sometimes deal with FHAs.
21 But they get involved in that for every complex. 04:39PM

22 Q. So this person's job is on a daily basis statewide
23 transport to coordinate and determine whether or not the
24 medications that an inmate needs are making it to the receiving
25 facility? 04:39PM

1 A. Yes. They would be keeping track of that. And they
2 actually work for Christine Harkins, but yes. So they actually
3 work with her, this person.

4 Q. How does the person in this position keep track of whether
5 or not the medications are making it from the departure
6 facility to the receiving facility?

04:40PM

7 A. Anyone that has some type of discrepancy has to record
8 that. And this person would be on that list of notification of
9 that. So then they would follow up with it.

10 Q. And then once the discrepancy is reported, what happens
11 with that information?

04:40PM

12 A. Well, it would be a combination of things. One of the
13 things that we do daily is we have a meeting Monday through
14 Fridays with the FHAs and the wardens, and sometimes the
15 transportation sergeants are there also. But anyway, they meet
16 and they discuss issues and that's in the late afternoon. So
17 if there's been something that happened in the morning, they
18 would be talking about that.

04:40PM

19 Then we have duty officers that follow up with that,
20 and the person that's doing the coordinating out of Tucson they
21 just developed a form that's another form that elaborates even
22 a little bit more, gets a little more detail on this transfer
23 process. The first month that we used in all of our
24 institutions was the month of February. And it does seem to be
25 a good form to use and it looks like it's going to be

04:41PM

04:41PM

1 beneficial for us. But anyway, that form tracks everything
2 including action taken at the end of what the final action was.

3 Now, in a perfect world of this what should happen is
4 the duty officer or the shift commander should take that form,
5 they should go over to medical around 7:00 in the evening, say
6 have all these -- we had six inmates arrive today, were all of
7 them that had medication, were all of them administered their
8 medication? The medical staff would record yes, they were or
9 no, they weren't. If it was no, it would be okay, what are we
10 going to do right now to make sure that medicine is

04:41PM

04:42PM

11 administered? And then the next question would be has it been
12 entered into eOMIS. So that would also be something they would
13 follow up with that particular form.

14 Then that would be signed so we have a record now of
15 everything happening. That's how it's supposed to work.

04:42PM

16 MS. LOVE: Your Honor, I was about to move on to a new
17 exhibit so it's probably a good place to stop.

18 THE COURT: Very good.

19 Mr. McWilliams, thank you for your time today. I'm
20 sorry we will have to have you come back to finish.

04:42PM

21 THE WITNESS: It's okay.

22 THE COURT: I appreciate it. Thank you, sir. Just
23 before you leave, though, one question: The DI that we have
24 just been talking about, the date that it's issues on, is that
25 the date that it becomes effective or --

04:43PM

1 THE WITNESS: Yes, it is. It becomes effective on
2 that date.

3 THE COURT: So when a director issues such a thing as
4 these directives, it's sometimes a prospective date than the
5 date it's prepared if it needs time to be to prepared, but we
6 should expect the date we see here is the date it should be in
7 place.

04:43PM

8 THE WITNESS: Yes, it is.

9 THE COURT: Thank you very much. Thank you, sir. You
10 may step down.

04:43PM

11 The first question I have is were you able to confer
12 about the possible next time so that we can conclude the taking
13 of the testimony on the Order to Show Cause?

14 MS. EIDENBACH: Your Honor, we weren't entirely able
15 to confer about that because we weren't sure how you were going
16 to rule on the order of the witnesses this afternoon. But I
17 will be covering the hearings, and I am available on all of the
18 days and times that you have offered.

04:43PM

19 THE COURT: Mr. Struck gave a hint as to what his
20 preference was. Is that still the case?

04:44PM

21 MR. STRUCK: Our preference would be the April 10th,
22 afternoon of April 10th since it's right before the status
23 hearing anyway.

24 THE COURT: So that would be all right with you, Ms.
25 Eidenbach?

04:44PM

1 MS. EIDENBACH: That is fine with me. The only
2 concern I have is that we are able to finish -- I'm sorry -- or
3 whether we need an additional day, which our preference would
4 be to plan now if we're going to need an additional day. And
5 we would also just like to clarify whether defendants plan to
6 redirect Mr. Pratt or whether we'll just be doing Mr.
7 McWilliams, Division Director McWilliams the rest of his direct
8 and then my cross-exam and redirect.

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9 THE COURT: I think if we start -- I mentioned 1:30
10 before but if we start at 1:00 on the 10th, we should be able
11 to, I think, in light of what I understand the remaining
12 witnesses that have been talked about in time seem to me that
13 we would be able to conclude. If not, we can grab a little bit
14 from the 11th. But I think that would work.

15 Did you have real fear that it would not, wouldn't be
16 enough time, Ms. Eidenbach?

17 MS. EIDENBACH: Your Honor, I probably will not need
18 that much time with Mr. McWilliams, so I'm not sure that I'm
19 the deciding factor in this equation.

20 MR. STRUCK: I think that will be enough time.

21 THE COURT: So that's what we'll do, 1:00. I said
22 before 1:30 because oftentimes we start at 1:30. But there's
23 no reason we can't start at 1:00. So 1:00 then we'll continue
24 the OSC hearing on the 10th of April.

25 And then the other issues that I wanted to address is

1 the timetable with respect to addressing these other issues of
2 the names. I really do believe that the fact that 38 out of 50
3 of the sort of spot check produced such an error rate raises a
4 real concern, and so I do think that the defendants need to go
5 back and reevaluate and take a serious look at the, what I will
6 call, a prima facie case that the plaintiffs made with respect
7 to the other 370 names. I think we need to have that in
8 advance of the continuation of the hearing for certain.

04:46PM

9 So, I mean, I will give you a chance to be heard about
10 it, but I'm about to set a deadline.

04:46PM

11 MR. STRUCK: Your Honor, we intend to get to the
12 bottom of it as well, and I don't know what time parameters you
13 are talking about but it seems we're going to need to talk to
14 our folks and Corizon and figure out how to accomplish this
15 based upon the information that we receive from Corizon
16 regarding the apparent burden of doing this.

04:47PM

17 THE COURT: What I would propose is that you complete
18 this task and identify all the names as you were required
19 originally to do no later than the 6th of April. I will hear
20 from plaintiffs on their opinion of that date.

04:47PM

21 MS. KENDRICK: April 6th is fine, sir.

22 THE COURT: 6th. So I'm going to order that you
23 comply with the original order no later than the 6th, and that
24 includes the reevaluation of -- well, the directly addressing
25 the issues that have been raised by plaintiffs with respect to

04:48PM

1 the questions about the names and that at the end of the
2 process that the appropriate person with the competency to do
3 so execute an affidavit testifying to the veracity of the
4 process and also to the veracity of the names that are
5 included.

04:48PM

6 The other two issues that I have looked at in terms of
7 sort of housekeeping is I think I have allowed to remain open a
8 sufficient long period of time Docket Number 1819. And that is
9 the issue arising out of the Tucson retaliation claim. I have
10 heard about that from the witnesses. I have addressed it in a
11 way that I think has been constructive. I think that in light
12 of the issues that are presently before the Court, it doesn't
13 make much sense for the Court to devote further time to that.

04:48PM

14 So I would propose to conclude 1819 as now having been
15 addressed and rendered moot by the Court's inquiry. I don't
16 propose to take any further action, because I have not heard
17 about -- it seems to me that if there are fee issues associated
18 with it it can be included in another fee issue and in terms of
19 sanction, I don't think it's appropriate to devote more
20 attention to it at this time.

04:49PM

04:49PM

21 But I will give plaintiffs a chance to address that.

22 MS. EIDENBACH: Your Honor, I think it was addressed
23 sufficiently at the time, and we have no objection to Your
24 Honor's proposal.

25 THE COURT: All right. The defendants wanted to have

04:49PM

1 the opportunity to be heard. I gave them that opportunity to
2 be heard on the issue, so I think I would be surprised if you
3 were going to want to hold on to this one as well. But I will
4 give you a chance to say that.

5 MR. STRUCK: Well, if I understand, you aren't making
6 any kind of determination. 04:50PM

7 THE COURT: I'm making no determination. I have made
8 the inquiry and I have heard about it. I wanted to make sure
9 you had your side heard. I heard about it from the plaintiffs.
10 I had an initial reaction that you disagreed with and we 04:50PM
11 heard -- I was educated to the extent that the limitation
12 always exist. I had representations that were made that were
13 very concerning to me, and I have had such representations and
14 I made inquiry. Sometimes those produce results; sometimes
15 they don't. But sometimes the inquiry enough is sufficient and 04:50PM
16 so that's where I am on that.

17 Turning to the Motion to Enforce at Document 2253, I
18 don't think that there is any further action that's necessary
19 at this time, so I would deny that without prejudice to having
20 it being reurged if it turns out that the further reporting 04:50PM
21 indicates that we need to return to that. So that's what I
22 would do there. If anybody has an objection they can raise it
23 now.

24 MS. KENDRICK: Are you referring to the motion to
25 enforce with the non-compliant performance measures? 04:51PM

1 THE COURT: These are the ones where it looks to me
2 like you all -- I held in abeyance because you were saying they
3 were subject to the triggering device but it looked like the
4 trending was such that we shouldn't be devoting more energy to
5 it. So that's the one I'm talking about.

04:51PM

6 MS. KENDRICK: What was the docket number, sir?

7 THE COURT: 2253.

8 MR. FATHI: May we have a moment, Your Honor?

9 THE COURT: Yes.

10 Here's what I would do with it: What I have done in
11 the past is I said yes, you are right. It was triggered. But
12 it doesn't make much sense to continue to go on it, because it
13 looks like among the things we're addressing this one doesn't
14 seem to be presently still as serious. So it's a granting in
15 part and a denial in part.

04:51PM

16 MS. KENDRICK: Correct. You granted part of them
17 several months ago. The Motion to Enforce that's outstanding
18 is the one that was filed January 4th of 2018. And that one is
19 still outstanding.

04:52PM

20 THE COURT: Which one is that again? Please remind
21 me.

04:52PM

22 MS. KENDRICK: Sorry. This is not my computer.

23 THE COURT: No. Beggars can't be choosers. If you
24 can come up with it, it would be helpful.

25 MS. KENDRICK: It's Docket 2520, sir.

04:52PM

1 THE COURT: 2520. Let me see if we have a copy of it
2 here in the courtroom. I will get back to you on that one.

3 So then the other thing that is looming is the
4 conclusion of the evidentiary hearing on the veracity of the
5 monitoring program. And I don't know whether you all talked 04:53PM
6 about that when you were discussion possible going forward
7 dates, but there seems to also be a need to take a look at what
8 the summertime dates are in light of people's travel schedules
9 and things like that. And I wonder if maybe it makes sense for
10 you in the next week to meet and confer about other dates that 04:53PM
11 are necessary, make a short-term plan that would include the
12 time that's necessary to address these evidentiary -- the
13 evidentiary hearing on the monitoring issues and also to
14 address the status reports going forward to make sure that
15 we've got a timetable that works for everybody through the 04:54PM
16 summer. I just want people to take a look at that.

17 MR. FATHI: Yes, Your Honor.

18 THE COURT: If you could do that within -- by the
19 close of business next week and report back to Ms. Selzer on
20 what you think is necessary we'll let you know whether we can 04:54PM
21 accommodate the dates you have talked about. Is that all
22 right?

23 MR. FATHI: I'm sorry, Your Honor, you said close of
24 next week meaning April 6th?

25 THE COURT: Yes. 04:54PM

1 MR. FATHI: Very good. Thank you.

2 THE COURT: Is there anything else anybody would like
3 to raise? That's what's on my agenda. Let me check. That's
4 it. All right. No?

5 All right. Thank you all very much for the
6 presentations these two days and for the accommodation of
7 working out the schedules that we had to do. And I'm sorry
8 that we're not able to be readily available just for an
9 important matter in both parties' interest. But unfortunately
10 we just have to deal with the restrictions that exist, and
11 that's a fact of life.

04:54PM

04:55PM

12 Thank you all very much. We're at recess.

13 (Proceeding concluded at 4:55 p.m.)

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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 28th day of March, 2018.

s/Laurie A. Adams

Laurie A. Adams, RMR, CRR