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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO

MARCIANO PLATA, et al.,

Plaintiffs,

v.

EDMUND G. BROWN, JR., et al.,

Defendants.

Case No. C01-1351 TEH NMC

PARTIES' JOINT STATEMENT ON DISCOVERY DISPUTE OVER PLAINTIFFS' REQUESTS FOR ADMISSION

The parties hereby submit to Magistrate Judge Cousins the attached Joint Statement.

Dated: July 17, 2013

Respectfully submitted,

/s/
Sara Norman
Attorney for Plaintiffs

July 17, 2013

The Honorable Nathanael M. Cousins
United States Magistrate Judge
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Plata et. al v. Brown et, al.*, Case No. C01-1351 (TEH)

Dear Judge Cousins:

The parties submit this joint statement regarding their discovery dispute over two Requests For Admission ("RFAs") served by Plaintiffs on Defendant Governor Edmund G. Brown, Jr. ("Defendant") pursuant to Rule 36.

On February 19, 2013, Judge Henderson re-opened discovery in this case "to allow Plaintiffs an opportunity to prepare for a potential termination motion at the same time as Defendants." Order Re: Plaintiffs' February 14, 2013 Motion for Discovery, February 19, 2013 (Dkt #2542). On April 16, 2013, Plaintiffs served Defendant with RFAs asking him to admit the accuracy of statements ascribed to him in articles published by the Sacramento Bee newspaper. Plaintiffs later specified that the statements at issue were as follows:

1. "During the life of these lawsuits, the prison health care budget has gone from $700 million to $2 billion. . . . That money is coming out of the university, it's coming out of child care. It's a situation you wouldn't dream anyone would want."

2. Gov. Jerry Brown said Friday his administration will not comply with a federal court order rejecting his effort to avoid reducing California's prison population, pledging to litigate "until the Supreme Court tells us that we're not on the right track."

Defendant objected to these RFAs on several grounds. After meeting and conferring over those objections, the parties have been unable to resolve this discovery dispute and their respective positions are set forth below.

I. PLAINTIFFS' POSITION

A. The RFAs Are Reasonably Calculated To Lead To the Discovery of Admissible Evidence

Defendant objects that the RFAs are not reasonably calculated to lead to admissible evidence. He is incorrect. The admissions sought are relevant to Defendant's anticipated motion to terminate the Court orders in this case under the Prison Litigation Reform Act and Rule 60(b)(5) of the Federal Rules of Civil Procedure. To terminate relief in this case, Defendant will have to demonstrate that medical care in California prisons is no longer so deficient as to violate the U.S. Constitution. 18 U.S.C. § 3626(b); *Gilmore v. California*, 220 F.3d 987, 1007 (9th Cir. 2000). In other words, he must show that he is no longer deliberately

indifferent to the serious medical needs of California prisoners. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). His state of mind is thus directly relevant to his termination motion.

The two statements referred to in the RFAs illustrate Defendant's state of mind regarding prison medical care and the Court-ordered remedies for the long-standing constitutional violations. If funding for prison health care, in the Governor's opinion, is universally detestable because it robs the budgets of universities and child care programs, then his ability to make good faith commitments to fund prison health care at a constitutional level is in doubt. The Three Judge Court recently found that Defendant's public statements regarding compliance with court orders were relevant to its consideration of whether the order to reduce the prison population should be vacated or modified under Rule 60(b)(5). The Court concluded that, "the Order that governs the actions that the Governor is required by law to take is directly contrary to the representations he has made in his official capacity, as well as to the official actions he has taken in this case. This raises serious doubts as to the Governor's good faith in this matter and in the prison litigation as a whole." Opinion and Order Denying Defendants' Motion to Vacate or Modify Population Reduction Order, April 11, 2013 (Dkt #2590), at 55. The Court therefore refused to "exercise its equity power to grant defendants relief." *Id*. Defendant's public defiance of the Court-ordered remedies for his historic deliberate indifference to the serious medical needs of the plaintiff class is relevant to the Court's consideration of whether deliberate indifference remains.

B. The RFAs Are Straightforward and Not Burdensome

Defendant contends that because newspaper articles are self-authenticating, Plaintiffs' requests that he admit that he made the statements at issue are "unreasonable and undue annoyance, oppression, burden, and expense." This objection lacks merit for three reasons.

First, Plaintiffs did not ask about the authenticity of the articles. Rather, Plaintiffs asked Defendant to admit that he made the statements ascribed to him. Courts routinely recognize this distinction. *See, e.g.*, *Miller v. Holzmann*, 240 F.R.D. 1, 4 (D. D.C. 2006) (holding that "the 'objection' that the document speaks for itself does not move the ball an inch down the field and defeats the narrowing of issues in dispute that is the purpose of the rule permitting requests for admission").

Second, these RFAs amount to two simple questions that require no research, expense, or document review, and a minimal expenditure of time. Someone need only ask Defendant if he made the statements that are quoted and paraphrased in the two short newspaper articles. Under controlling authorities, Defendant must make "reasonable inquiry" for information "readily obtainable" to him when responding to the RFAs. *Asea, Inc. v. Southern Pacific Transportation Co*., 669 F.2d 1242, 1247 (9th Cir. 1982) ("[a] response which fails to admit or deny a proper request for admission does not comply with the requirements of Rule 36(a) if the answering party has not, in fact, made 'reasonable inquiry,' or if information 'readily

obtainable' is sufficient to enable him to admit or deny the matter"). Defendant's refusal, therefore, to undertake even the slightest effort to respond to the RFAs violates Rule 36.

Third, Defendant's argument that "Plaintiffs should not be allowed to ask Defendant to admit that he was accurately quoted every time a newspaper reports on something he said" is similarly inapposite. Plaintiffs have asked about only two reports.

C. The Evidence Is Not Equally Available Through Another Source

Defendant makes a general objection that he should not have to admit whether the articles are accurate as to his statements because, he claims, the information is equally available to plaintiffs through public sources or records. Defendant is wrong: the information is not available through any other source. An admission that the statements were, in fact, made is different from a recording of the statements, even if one existed. Courts have emphasized this distinction in requiring parties to respond to requests for admission: "There is no support in the laws of evidence for the proposition that, because a document lies in a court jacket in a courthouse somewhere in Alabama, a party is relieved from admitting or denying the truth of its contents." *Miller*, 240 F.R.D. at 4; *see also Henry v. Champlain Enters., Inc.*, 212 F.R.D. 73, 78 n.2 ("objections claiming . . . that the opposing party has knowledge of the matter or could independently investigate will be unavailing").

II. DEFENDANT'S POSITION

Governor Brown's responses to Plaintiffs' Requests for Admission (Set One), April 16, 2013 satisfy Federal Rule of Civil Procedure 36. Governor Brown's objections are proper and valid, and no further response is necessary. The requests at issue are not relevant to the constitutionality of the prison health care system, nor are they reasonably calculated to lead to the discovery of admissible evidence. Moreover, Plaintiffs' requests are harassing and burdensome, especially considering the Governor's role in effectively leading the State and communicating with its citizens. Plaintiffs' motion should be denied.

A. Rule 36(a)(3) permits the responding party to serve objections to requests for admission.

Rule 36(a)(3) plainly permits the responding party to serve a "written answer *or objection* addressed to the matter." Fed. R. Civ. P. 36(a)(3)(emphasis added). Thus, there is nothing inherently improper in Governor Brown's service of objections in lieu of answers to the requests for admission at issue. Moreover, the "reasonable inquiry" requirement referenced by Plaintiffs relates not to objections, but to answers that assert lack of knowledge or information sufficient to admit or deny the request. Fed. R. Civ. P. 36(a)(4). Thus, this analysis does not apply to Governor Brown's responses.

B. The RFAs are neither relevant to the constitutionality of the prison health care system nor reasonably calculated to lead to the discovery of admissible evidence.

The central issue in this case is the constitutionality of the medical-care-delivery system in California's prisons. Plaintiffs fail to meet their burden of showing why two statements attributed to the Governor could possibly be relevant (let alone lead to the discovery of admissible evidence) to this issue. *See Soto v. City of Concord*, 162 F.R.D. 603, 610 (N.D. Cal. 1995). The Governor's statements to the press regarding litigation strategy and public opinion have no bearing on the constitutional adequacy of the prison health care system. Indeed, statements that infer that the State intends to pursue all of its appellate rights and remedies, and that the People of California would not want to fund inmate health care at the cost of depriving universities and child care of funding in no way demonstrate that the State has been or intends to be deliberately indifferent to inmate medical care.

During the parties' meet and confer on this topic, Plaintiffs' counsel indicated that these statements were relevant to Plaintiffs' pending contempt motion. Certainly, the fact that the parties had already completed briefing related to Plaintiffs' request for contempt by the time the parties met and conferred, and the fact that the Three-Judge Court recently deferred any decision on Plaintiffs' request for contempt, moots Plaintiffs' argument that these RFAs are relevant to any pending proceeding before this Court. (June 20, 2013 Order, Dock. No. 2659 at 51:1-5.)

After the parties met and conferred, Plaintiffs' counsel "clarified" her position with respect to relevance and informed Defense counsel that the RFAs "are relevant to the upcoming termination motion as evidence of Defendant's ability, willingness, and intent to provide the resources necessary to correct the constitutional violations in this case." This rationale is likewise unpersuasive. No motion to terminate is pending. Further, this Court's February 21, 2013 Order requires Defendants to provide 120 days' notice of their intent to file any such motion. While Defendants filed an interlocutory appeal from the February 21, 2013 order, as this Court has noted, "the appeal has no effect on . . . defendants' obligation to comply with our [February 21, 2013] Order." (April 11, 2013 Order, Dock. No. 2590 at 60, fn. 43.) Thus, Plaintiffs' RFAs are not relevant to *any* matter currently pending before this Court. The RFAs become no more relevant because Plaintiffs anticipate a future motion, particularly when they must be given four months advance notice of any such motion. Notably, Defendants have not provided notice of their intent to file a termination motion to date.

Further, the RFAs have no bearing on any deliberate indifference analysis, as Plaintiffs incorrectly suggest. The deliberate indifference standard includes both objective and subjective components. The alleged deprivation must objectively be sufficiently serious and cause an "unnecessary and wanton infliction of pain." *Wilson v. Seiter*, 501 U.S. 294, 298 (1991); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Additionally, Plaintiffs must show

that state officials have acted with a "sufficiently culpable state of mind" to be held responsible for constitutional violations. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). The Governor's statements at issue – that the State intends to pursue its appellate remedies and that the prison health care budget has expanded significantly at the expense of education and child care – do not tend to prove any aspect of the deliberate indifference analysis, nor would they lead to the discovery of admissible evidence. The Governor's state of mind with respect to his litigation strategy or his perception of public opinion with respect to State spending in no way translates to a "culpable state of mind" such that it would be relevant to any deliberate indifference analysis. In fact, the statement that the State has funded inmate medical care to the detriment of other public services indicates the contrary. Because Plaintiffs cannot demonstrate that their RFAs are relevant to the constitutional adequacy of prison health care, or that the RFAs are reasonably calculated to lead to the discovery of admissible evidence, the Governor must not be compelled to further respond.

C. The RFAs are harassing and burdensome.

The Governor speaks to the press on an almost daily basis. To require the Governor to respond to a discovery request each time he makes a statement to the press would be unduly burdensome, harassing, and would inhibit his ability to effectively lead the State and communicate with its citizens. Plaintiffs dismiss this concern altogether by asserting that there are only two requests for admission currently at issue. That may be the case now, but if the Governor is required to respond to two requests now, what next? There is no guarantee that Plaintiffs will not propound additional, similar requests in the future, especially if and when Defendants give notice of their intent to file a motion to terminate. The Governor should not be expected to respond to a request for admission each time he speaks to the press on the subject of prison health care, especially when news articles covering the same are self-authenticating. Fed. R. Evid. 902(6). Indeed, one of the identified "statements" consists mostly of paraphrase rather than direct quote. Further, Plaintiffs' ignorance of the Governor's impacted schedule and long list of obligations does not make these two requests any less burdensome or harassing.

Conclusion

Governor Brown's responses to Plaintiffs' requests for admission are adequate, valid, and proper. Contrary to Plaintiffs' contention, the requests for admission seek irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence. Further, the burdensome and harassing nature of the requests weighs against compelling any further response. Thus, Plaintiffs' motion to compel should be denied.

/s/ Sara Norman
Counsel for Plaintiffs

/s/ Samantha D. Wolff
Counsel for Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MARCIANO PLATA, and others,

Plaintiffs,

v.

EDMUND G. BROWN, JR., and others,

Defendants.

Case No. 01-cv-01351 TEH (NC)

ORDER REQUESTING DOCUMENTS AND TAKING LETTER BRIEF UNDER SUBMISSION

Re: Dkt. No. 2676

The Court received the parties' joint letter brief regarding their dispute over plaintiffs' requests for admission. The Court has determined that the discovery dispute is suitable for determination without oral argument and will take the matter under submission. Fed. R. Civ. P. 78(b). By July 19, 2013 at 5:00 p.m., plaintiffs must file in ECF a copy of the requests for admission at issue and any responses that defendants have provided to date.

IT IS SO ORDERED.

Date: July 18, 2013

Nathanael M. Cousins
United States Magistrate Judge