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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Fred Graves, Isaac Popoca, on their own)
behalf and on behalf of a class of all)
pretrial detainees in the Maricopa County)
Jails,)

No. CV-77-00479-PHX-NVW

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ORDER

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Plaintiffs,)

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vs.)

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Joseph Arpaio, Sheriff of Maricopa)
County; Fulton Brock, Don Stapley,)
Andrew Kunasek, Max W. Wilson, and)
Mary Rose Wilcox, Maricopa County)
Supervisors,)

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Defendants.)

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Before the Court are Defendant Arpaio’s Motion Regarding Detention Staff

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Training Relating to Mental Health Issues, Defendant Maricopa County Board of

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Supervisors’ Motion to Vacate June 14, 2011 Evidentiary Hearing, Plaintiffs’ Motion for

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an Order Adopting the Unopposed Recommended Remedies of the Court’s Experts, and a

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discovery dispute. (Docs. 1949, 1953, 1954, 1959, 1963.) No one has requested oral

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argument on any of the pending motions pursuant to LRCiv 7.2(f) although oral argument

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and/or evidentiary hearing on these issues has been suggested as an alternative to a

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decision on the briefs in a few of the numerous documents filed. In the final reply on

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these motions, filed May 12, 2011, CHS Defendants join Plaintiffs in requesting an

1 expedited ruling on Defendants’ Motion to Vacate June 14, 2011 hearing, which the
2 Court hereby grants.

3 **I. Background**

4 **A. The Second Amended Judgment**

5 This class action, alleging that the civil rights of pretrial detainees held in the
6 Maricopa County Jails had been violated, was brought against the Maricopa County
7 Sheriff and the Maricopa County Board of Supervisors in 1977. In 1981, the parties
8 entered into a consent decree, which was superseded in 1995 by the stipulated Amended
9 Judgment. The Amended Judgment expressly did not represent a judicial determination
10 of any constitutionally mandated standards applicable to jails.

11 In 1998, Defendants moved to terminate the Amended Judgment pursuant to the
12 Prison Litigation Reform Act (“PLRA”), 18 U.S.C. § 3626 and 42 U.S.C. § 1997e. Their
13 motion was denied based on Ninth Circuit law holding the decree termination provisions
14 of the PLRA unconstitutional. In 2000, the Ninth Circuit held the PLRA decree
15 termination provision constitutional in another case and subsequently reversed and
16 remanded this case in January 2001. In September 2001 and November 2003, Defendants
17 renewed their motion to terminate the Amended Judgment. In April 2008, this case was
18 reassigned to the undersigned judge.

19 In August and September 2008, a thirteen-day evidentiary hearing was held.
20 During that process, Plaintiffs agreed not to contest termination of certain paragraphs of
21 the Amended Judgment. On October 22, 2008, Defendants’ Renewed Motion to
22 Terminate the Amended Judgment pursuant to the PLRA was granted in part and denied
23 in part, and the provisions of the Amended Judgment remaining in effect were restated in
24 the Second Amended Judgment entered the same day. (Docs. 1634, 1635.) The Second
25 Amended Judgment consists of those provisions of the Amended Judgment for which
26 “prospective relief remains necessary to correct a current and ongoing violation of the
27 Federal right, extends no further than necessary to correct the violation of the Federal
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1 right,” “is narrowly drawn,” and is “the least intrusive means to correct the violation.”
2 *See* 18 U.S.C. § 3626(b)(3).

3 On November 21, 2008, Defendants filed a notice of appeal with the Court of
4 Appeals for the Ninth Circuit. On October 13, 2010, the Court of Appeals affirmed the
5 Second Amended Judgment. On November 2, 2010, Defendant Arpaio filed a petition for
6 rehearing en banc, which was denied on March 25, 2011. On April 4, 2011, the Court of
7 Appeals mandate issued revesting jurisdiction in this Court.

8 **B. Terminating the Second Amended Judgment**

9 Congress enacted the PLRA to prevent federal courts from micromanaging prisons
10 by mere consent decrees and to return control of the prison system from courts to “the
11 elected officials accountable to the taxpayer.” *Gilmore v. California*, 220 F.3d 987, 996
12 (9th Cir. 2000). “[N]o longer may courts grant or approve relief that binds prison
13 administrators to do more than the constitutional minimum.” *Id.* at 999. The PLRA
14 requires that prospective relief regarding prison conditions “extend no further than
15 necessary to correct the violation of the Federal right of a particular plaintiff or
16 plaintiffs.” 18 U.S.C. §3626(a)(1).

17 The PLRA also provides that any order for prospective relief regarding prison
18 conditions is terminable upon the motion of any party or intervener two years after a
19 district court has granted or approved the prospective relief, one year after the district
20 court has entered an order denying termination of prospective relief under the PLRA, or
21 two years after the enactment of the PLRA for orders issued before the PLRA’s
22 enactment. 18 U.S.C. § 3626(b)(1). The party seeking to terminate the prospective relief
23 bears the burden of proving prospective relief no longer is necessary to correct a current
24 and ongoing constitutional violation. *Gilmore*, 220 F.3d at 1007.

25 Under § 3626(b)(3), a “district court cannot terminate or refuse to grant
26 prospective relief necessary to correct a current and ongoing violation, so long as the
27 relief is tailored to the constitutional minimum.” *Id.* at 1007-08. Before ruling on a
28 motion to terminate, the district court must inquire into current prison conditions unless

1 plaintiffs do not contest defendants’ showing that there is no current and ongoing
2 violation. *Id.* at 1008. If prospective relief remains necessary to correct a current and
3 ongoing violation, the district court’s authority to modify the existing prospective relief
4 includes authority to expand or diminish the existing relief. *See Pierce v. Orange County*,
5 526 F.3d 1190, 1204 n.13 (9th Cir. 2008). Determining whether such relief meets
6 § 3626(b)(3)’s need-narrowness-intrusiveness criteria “will obviously rest upon case-
7 specific factors—namely, the extent of the current and ongoing constitutional violations.”
8 *Id.* at 1206.

9 **C. Enforcing the Second Amended Judgment**

10 After the Second Amended Judgment was issued on October 22, 2008, the parties
11 began efforts to achieve compliance. On January 28, 2009, upon stipulation of the
12 parties, the Court appointed medical expert Dr. Lambert King and mental health expert
13 Dr. Kathryn Burns as independent evaluators of Defendants’ compliance with the medical
14 and mental health provisions of the Second Amended Judgment. The Court greatly
15 appreciates the assistance Dr. King and Dr. Burns have provided to the Court and the
16 parties in identifying areas of need, documenting progress, and recommending strategies
17 for achieving full compliance with the Second Amended Judgment.

18 On April 7, 2010, the Court ordered the parties “to meet and confer to develop a
19 proposed procedure for achieving and demonstrating Defendants’ complete compliance
20 with the Second Amended Judgment, including a procedure for Plaintiffs to submit fee
21 applications at appropriate intervals to be paid promptly by Defendants.” (Doc. 1880 at
22 4.) The order explained, “The Court’s purpose is to set a procedure by which full
23 compliance with the Second Amended Judgment is either confirmed or specific
24 implementing remedies are ordered and complied with by the end of this year.” (*Id.*)

25 On June 18, 2010, the parties filed a joint report regarding nonmedical provisions
26 of the Second Amended Judgment, in which Defendant Arpaio asserted that the Maricopa
27 County Jails are in complete compliance with the nonmedical provisions of the Second
28 Amended Judgment. Plaintiffs disputed that assertion with respect to portions of those

1 provisions. On July 30, 2010, the parties filed a Supplemental Joint Report Regarding
2 Nonmedical Provisions of the Second Amended Judgment, which addressed food
3 provided to pretrial detainees in the Maricopa County Jails. Plaintiffs did not dispute that
4 the menu provided by Defendant Arpaio satisfied the Second Amended Judgment's food
5 requirements, but contended that inmates' food journals indicated that they were not
6 receiving the amount of vegetables stated in the menu and were still consistently
7 receiving inedible moldy bread and oranges. Defendants explained that inmate journals
8 likely did not include vegetables incorporated in the stew and that production records
9 document actual weights of vegetables added to the stew in addition to the side vegetables
10 served. Defendants further explained procedures followed to prevent moldy bread or
11 oranges from being served and to provide replacement meals should any moldy bread or
12 oranges be included in the meals served.

13 Also on July 30, 2010, the parties filed a Joint Report Re: Medical/Mental Health
14 Provisions of the Second Amended Judgment. The parties recommended that the Court-
15 appointed medical and mental health care experts file compliance reports offering their
16 assessments of the areas contemplated by the Second Amended Judgment that they
17 perceive as resolved and those that they believe remain unresolved, together with their
18 remedial proposals for each unresolved area of inmate medical and mental health care.
19 The experts' compliance reports were filed on August 25, 2010. Plaintiffs subsequently
20 filed a notice that they had no objections to the experts' proposed remedies.

21 On August 27, 2010, the Court held a status hearing regarding the parties'
22 proposed timeline for discovery and the remaining proceedings in this case. Defendants'
23 proposal included the following paragraph:

24 4. By September 9, 2010, the parties will notify the Court, the
25 parties and the consultants/experts, whether they accept or object to any of
26 the consultant's/expert's findings and remedial recommendations. If neither
27 party objects to a consultant's/expert's findings and remedial
28 recommendations, the Court will adopt those findings and that remedy as an
order of the Court.

1 (Doc. 1895 at 16.) During the status hearing, referring to the paragraph quoted above, the
2 Court stated:

3 Your proposal had suggested that if you are able to agree on a course
4 of action, that it would be automatically adopted by the Court. Now, if you
5 are able to agree and the experts agree, it is highly likely that I will agree.
6 But I cannot give that authority away in advance. I have to be persuaded.

7 So that part, this last sentence on Paragraph 4, I'm going to have to
8 change that so that whatever you agree on still needs to be presented to the
9 Court. Now, as I said, it's very unlikely I will disagree. But I will need to
10 make a judgment that the course of action is appropriate.

11 (Doc. 1908 at 35-36.)

12 After the Court of Appeals affirmed the Second Amended Judgment, Defendant
13 Arpaio filed a motion to terminate paragraphs 2-5 and 9-16 of the Second Amended
14 Judgment on October 28, 2010, but filed a petition for rehearing en banc on November 2,
15 2011. On November 17, 2010, the Court denied Defendant Arpaio's motion to terminate
16 for lack of jurisdiction without prejudice to refile it after the Court of Appeals' mandate
17 issued and jurisdiction was revested in this Court.

18 On January 20, 2011, the parties filed a Joint Case Management Plan Regarding
19 Health Care, which stated that Defendants had resolved most of their disagreements with
20 the medical and mental health experts' proposed remedies and identified two issues on
21 which Defendants continued to disagree with the recommendations. Defendant Maricopa
22 County Board of Supervisors indicated that it had made a voluntary choice not to oppose
23 the experts' remaining recommendations and to pursue all of the other remedies proposed
24 by the experts even though not all were contemplated by, or appropriate under, the
25 Second Amended Judgment. During a status conference on January 21, 2011, the Court
26 set an evidentiary hearing regarding "physician staffing" issues for June 14, 2011, ordered
27 briefing on "detention staff training" issues, and stated that these orders did not preclude
28 resolution of other enforcement issues should any arise. The Court subsequently set a
schedule, as jointly proposed by the parties, for discovery related to "physician staffing"
issues in preparation for the anticipated June 14, 2011 evidentiary hearing.

1 During the January 21, 2011 status conference, Plaintiffs stated they did not
2 believe that Defendants were in full compliance with the nonmedical provisions of the
3 Second Amended Judgment, but that additional remedies were unnecessary. Plaintiffs
4 indicated they would communicate with Defendants regarding any outstanding issues and
5 attempt to resolve them before the appellate mandate issued and Defendant Arpaio would
6 be able to renew his motion to terminate the nonmedical provisions of the Second
7 Amended Judgment.

8 On March 9 and 10, 2011, the parties filed separate statements regarding a
9 discovery dispute, which they subsequently supplemented with further briefing. Plaintiffs
10 had retained Dr. Todd Wilcox as their medical expert, and they wished to tour the
11 Maricopa County Jails with Dr. Wilcox March 21-25, 2011, and to conduct specific
12 discovery. Defendant Maricopa County Board of Supervisors objected to the request
13 because it believed the purpose of the discovery was to obtain evidence for the June 14,
14 2011 hearing on “physician staffing,” the issue had been resolved, and there now was no
15 need for the hearing or related discovery. Defendant Arpaio also opposed Plaintiffs’ use
16 of Dr. Wilcox because of alleged bias. On March 18, 2011, Defendant Maricopa County
17 Board of Supervisors moved to vacate the June 14, 2011 evidentiary hearing because it
18 believed the “physician staffing” issues were resolved. On April 4, 2011, in addition to
19 responding to the motion to vacate the hearing, Plaintiffs filed a Motion for an Order
20 Adopting the Unopposed Recommended Remedies of the Court’s Experts.

21 **II. Discovery Dispute Filed March 9 and 10, 2011 (Docs. 1953, 1954, 1955)**

22 Defendants denied Plaintiffs’ request to schedule a tour of the Maricopa County
23 Jails on March 21-25, 2011, with a medical expert of their choice, to review medical
24 charts of class members on-site, to speak with class members in a manner that provides
25 audio privacy, and to speak with medical clinical and administrative staff. Plaintiffs
26 presented the request for the purpose of monitoring Defendants’ compliance with the
27 Second Amended Judgment and not limited to “physician staffing” issues for the June 14
28 evidentiary hearing. The Court has previously ordered that “upon reasonable notice to the

1 Defendants, Plaintiffs’ counsel may tour the Maricopa County Jails facilities, speak with
2 pretrial detainees and staff, and review records on-site.” (Doc. 1769.) Whether Dr.
3 Wilcox’s testimony will be permitted at a possible evidentiary hearing in the future does
4 not affect Plaintiffs’ present right to retain an expert to assist them in monitoring
5 Defendants’ compliance with the Second Amended Judgment. Therefore, Plaintiffs’
6 Statement Regarding Discovery Dispute (Doc. 1953) will be deemed a motion to compel
7 discovery and will be granted.

8 **III. Plaintiffs’ Motion for an Order Adopting the Unopposed Recommended**
9 **Remedies of the Court’s Experts (Doc. 1963)**

10 Plaintiffs’ Motion for an Order Adopting the Unopposed Recommended Remedies
11 of the Court’s Experts includes “a proposed Order incorporating the recommendations of
12 the Court’s experts,” which includes Dr. Burns’ recommendations verbatim. (Doc. 1963
13 at 2 n.1.) Dr. Burns’ recommendations generally address modifying medical and mental
14 health policies, procedures, records management, and forms.

15 Because “Dr. King’s recommended remedies are intermixed with discussion and
16 explication,” Plaintiffs have attempted to “extract his actual recommendations from the
17 remaining text and to set forth only the recommended remedies in the proposed Order.”
18 (*Id.*) However, the Corrective Action Plan included in Dr. King’s April 6, 2011 report
19 does not purport to be final and definitive. Dr. King expressly states that “further
20 adaptations within this Corrective Action Plan may well be necessary and appropriate
21 going forward over the next 12 to 18 months.” (Doc. 1966 at 37.)

22 Further, Plaintiffs’ proposed Order converts some of Dr. King’s “discussion and
23 explication” into orders for which compliance is not currently possible and may not ever
24 be possible. For example, with regard to evaluation and treatment of patients at risk for
25 alcohol and opiate withdrawal symptoms, the proposed Order states in part:

- 26 2. Patients participating in legal methadone treatment programs **will**
27 **continue to receive methadone maintenance** after [*sic.*] during
28 their pre-trial detention. **Methadone will be available within the**
MCJ for use in an opiate withdrawal treatment protocol for patients
who are heroin dependent. Two other drugs — Suboxone and
Subutex — are also acceptable alternatives.

1 3. Between July 1, 2001 and December 1, 2011, CHS will work
2 diligently to secure the approvals and community partnerships
3 necessary to provide methadone maintenance after jail entry and use
4 of methadone or other drugs for treatment of opiate withdrawal,
5 including approvals from state and federal agencies including the US
6 Drug Enforcement Administration.

7 (Doc. 1963-2 at 21, emphasis added.) In contrast, Dr. King's report states:

8 [P]atients participating in legal methadone treatment programs should
9 continue to receive methadone maintenance after [sic.] during their pre-trial
10 detention. In addition, since methadone is medically preferable to clonidine
11 in most respects, methadone needs to be available within the MCJ for use in
12 an opiate withdrawal treatment protocol for patients who are heroin
13 dependent. Two other drugs — Suboxone and Subutex — are also
14 acceptable alternatives.

15 Dr. Alvarez and I are having ongoing discussions about his diligent efforts
16 to secure the approvals and community partnerships necessary to provide
17 methadone maintenance after jail entry and use of methadone or other drugs
18 for treatment of opiate withdrawal. **Multiple regulatory, legal, licensure
19 and training issues remain to be resolved.** There appear to be three main
20 options, which are not necessarily mutually exclusive. These options are
21 the following:

- 22 • A licensed and community-base[d] drug addiction treatment
23 network **might be** engaged to come into MCJ facilities to evaluate,
24 counsel and treat patients receiving methadone maintenance or at
25 risk for opiate withdrawal and addiction treatment.
- 26 • CHS **may be able to** obtain Opiate Treatment Program (OTP)
27 certification by the Substance Abuse and Mental Health Services
28 Administration (SAMHSA) linked to OTP accreditation through the
National Commission on Correctional Health Care. . . .
- Individual physicians employed by CHS **might** complete the
additional training needed to obtain a SAMHSA DATA (Drug
Addiction Treatment Act of 2000) Waiver for use of Suboxone
(buprenorphine) and Subutex (buprenorphine plus naloxone
hydrochloride) in treatment of opiate addiction.

All of these options involve approvals from state and federal agencies
including the US Drug Enforcement Administration. **I estimate that
another three months (July 1, 2011) will be needed to establish a
feasible plan,** implementation of which can hopefully be completed by
December 1, 2011. This projected date reflects the substantial time
required to complete any of the three options outlined above.

(Doc. 1966 at 48-49, emphasis added.)

Moreover, some provisions of the proposed Order cannot be fully complied with
presently. For example, quoting from Dr. King's recommendations, the proposed Order
states, "CHS will track and monitor of [sic.] individual medication profiles and

1 medication administration records,” followed by the statement, “Fully adequate attention
2 to this action remains dependent on initiation of the electronic medical Order entry and
3 medication administration record systems currently being developed jointly by CHS and
4 Diamond Pharmacy Services.” (Doc. 1963-2 at 23.) Other provisions only set forth
5 general plans, *e.g.*:

6 Regarding the development of the Electronic Health Record System, a
7 Request for Proposals (RFP) document has been approved by the Maricopa
8 County Materials Management Department. Selection of a Vendor/System
9 and the HER Contract Award is slated to occur in July 2011. This will be
10 followed by a series of steps including hardware installation; Net
11 deployment; building work flow; content design; testing; and training. Full
12 activation of the system is projected for June 2013. As part of this
13 Corrective Action Plan, the foregoing milestones will be incorporated and
14 monitored.

15 (*Id.*)

16 The Court can and will enforce the Second Amended Judgment and will issue
17 orders regarding ancillary matters as needed to give effect to the Second Amended
18 Judgment. But the PLRA does not permit the Court to order prospective relief that
19 extends further than necessary to correct a current and ongoing constitutional violation.
20 Moreover, the Court will not order general aspirational statements that cannot be
21 specifically enforced. Therefore, Plaintiffs’ Motion for an Order Adopting the
22 Unopposed Recommended Remedies of the Court’s Experts (Doc. 1963) will be denied.

23 **IV. Defendant Maricopa County Board of Supervisors’ Motion to Vacate**
24 **June 14, 2011 Evidentiary Hearing (Doc. 1959)**

25 Defendant Maricopa County Board of Supervisors seeks to vacate the June 14,
26 2011 evidentiary hearing that was set to decide “physician staffing” issues, which
27 Defendant believes have been resolved. On April 6, 2011, the sixth reports of Dr. King
28 and Dr. Burns were filed and include some revisions to previous recommendations. In
29 response to Defendant’s motion to vacate the evidentiary hearing, Plaintiffs state they
30 believe that “the revised recommendations will help Defendants achieve full compliance
31 with the Second Amended Judgment so long as these remedies are adopted as a court
32 order to implement the Second Amended Judgment.” (Doc. 1964 at 2.) Plaintiffs further

1 state they would agree with Defendant that the June 14, 2011 evidentiary hearing is
2 unnecessary if the Court should decide to grant Plaintiffs' Motion for an Order Adopting
3 the Unopposed Recommended Remedies of the Court's Experts without requiring
4 testimony on the matter. However, for the reasons stated above, the Court will deny
5 Plaintiffs' Motion for an Order Adopting the Unopposed Recommended Remedies of the
6 Court's Experts and will not hear testimony on the matter. Therefore, the condition for
7 Plaintiff's agreement to vacate the June 14 hearing is not satisfied.

8 At this point, it is unclear whether the parties agree that the medical and mental
9 health experts' revised proposed remedies regarding "physician staffing" provide a plan
10 for Defendants to achieve full compliance with the medical and mental health provisions
11 of the Second Amended Judgment. On March 18, 2011, Plaintiffs said:

12 From Plaintiffs' perspective, Dr. King's and CHS's new plan (attached as
13 Exhibit A to CHS's Statement Re Discovery Dispute), which was provided
14 to Plaintiffs on March 11, departs significantly from Dr. King's original,
15 more stringent recommendations regarding intake staffing – and it
16 considerably dilutes his earlier recommendations, which he had strongly
17 defended as necessary as recently as his January 2011 report. Plaintiffs
18 have the right, after reviewing Dr. King's upcoming compliance report, and
19 after conducting discovery at MCJ with their own medical expert, to reach
20 their own conclusions as to whether this new plan is adequate to bring the
21 Defendants into full compliance with the Second Amended Judgment on the
22 issue of physician staffing.

23 (Doc. 1957 at 5.) On April 4, 2011, Plaintiffs said that "the revised recommendations
24 will help Defendants achieve full compliance" if adopted as a court order. (Doc. 1964 at
25 2.)

26 Thus, the Court cannot determine whether there is need for an evidentiary hearing
27 on "physician staffing." Moreover, the Court cannot determine from the parties'
28 submissions whether a "nursing issue" exists and whether it should be addressed in
conjunction with any remaining "physician staffing" issue. It appears, however, that if an
evidentiary hearing is required to resolve any remaining disputes regarding the nursing
and/or physician staffing components of a compliance plan, holding the evidentiary
hearing on June 14, 2011, would not permit adequate time for discovery and preparation.

1 Therefore, the evidentiary hearing set for June 14, 2011, will be vacated, and a
2 status/case management conference will be set in its place.

3 **V. Defendant Arpaio's Motion Regarding Detention Staff Training Relating to**
4 **Mental Health Issues (Doc. 1949)**

5 **A. Dr. Burns' Recommendations Are Limited to Determining Whether**
6 **Additional or Revised Detention Staff Training Is Needed and Do Not**
7 **Purport to Be Based on Evidence of a Systemic Constitutional**
8 **Violation.**

9 In her report filed August 25, 2010, Dr. Burns had not found evidence of a need
10 for additional training for detention officers and said she hesitated to adopt Plaintiffs'
11 recommendations (*see* Docs. 1900 at 37-38, 1897-2 at 14) as part of a remedial plan.
12 Instead, she recommended that Defendants' Continuous Quality Improvement program
13 determine whether additional training is needed and whether the current curriculum
14 should be revised or supplemented:

15 I believe that Segregation/Discipline and Training of Correctional
16 Staff are topics that can and do impact access to care within correctional
17 facilities nearly universally. However, in this particular case, the severity of
18 mental health staffing shortages and the lack of treatment programming
19 options has precluded my ability to truly assess the degree to which
20 Segregation/ Discipline and Correctional Staff Training have independently
21 impacted access to care. I believe it is premature therefore to offer a
22 detailed remedial plan for these areas because the effects of the additional
23 mental health staff, treatment interventions to segregated inmates and
24 modification of the MHU to house high custody inmates and actually
25 provide confidential individual and group treatment have not been
26 measured. On general principle, I do not disagree with any of the
27 [Plaintiffs'] recommendations but hesitate to adopt them as part of a
28 remedial plan without further evidence of need. However, because the
issues are so ubiquitous in correctional settings, I do offer the following
recommendations for the Continuous Quality Improvement program:

.....

1. Analyze the number, appropriateness and timeliness of security staff referrals to mental health to determine whether additional training is needed for all custody staff;
2. Charter a small committee of supervisory mental health and custody staff to review the mental health training curriculum for officers to revise or supplement as necessary for those officers assigned to posts dealing with inmates most at risk and a highest risk of serious mental health problems, namely, the booking/receiving area, the MHU and all segregation housing areas;

(Doc. 1905-1 at 21.)

1 In her report filed January 4, 2011, Dr. Burns noted Defendant Arpaio's objection
2 to her recommendations regarding detention staff training, but did not change those
3 recommendations. Again, she stated her recommendation that the training curriculum be
4 reviewed to determine whether there was need to revise or supplement it. She mentioned
5 three incidents of physical mistreatment by detention staff of restrained inmates in the
6 MHU as examples of events that possibly could be prevented by additional training.
7 Defendant Arpaio, however, asserts that all three mentioned incidents involved the same
8 detention officer, he was not assigned to the MHU, he has been charged with aggravated
9 assault, and no amount of training likely could have prevented his actions.

10 In her report filed April 6, 2011, Dr. Burns stated that for reasons stated in her
11 previous report, she continues to believe that her "modest quality improvement
12 recommendation . . . remains relevant and appropriate." Dr. Burns' recommendations
13 regarding detention staff training are not remedies to cure noncompliance with the Second
14 Amended Judgment. She merely suggests that the Continuous Quality Improvement
15 program include detention staff training in its assessment and improvement cycle.

16 **B. Although the Second Amended Judgment Does Not Expressly Require**
17 **the Assessment and Improvement of Detention Staff Training, the**
18 **Court May Order Additional or Revised Detention Staff Training If It**
19 **Is Needed for Defendants to Comply with the Second Amended**
20 **Judgment.**

21 As discussed above, the Second Amended Judgment consists of only those
22 provisions of the Amended Judgment for which "prospective relief remains necessary to
23 correct a current and ongoing violation of the Federal right, extends no further than
24 necessary to correct the violation of the Federal right," "is narrowly drawn," and is "the
25 least intrusive means to correct the violation." *See* 18 U.S.C. § 3626(b)(3). Plaintiffs
26 expressly did not contest termination of paragraphs 106 and 107 of the Amended
27 Judgment, which stated:

28 106. Defendants shall ensure that all new detention officers receive
a basic training course consisting of not less than forty hours prior to being
assigned to any detention-related duty.

1 107. Defendants shall ensure that ongoing training be provided
2 continuously during employment of all detention officers to sharpen their
3 skills, reinforce their knowledge and understanding of the fundamentals of
4 their jobs, and familiarize them with new developments in the field and new
5 policies and procedures of the institution, in a reasonable manner. Said
6 training shall include, but not be limited to the following: . . . (m)
7 recognition of the signs and symptoms of mental illness and mental
8 retardation;

9 (Docs. 166, 1635 at 17.) Thus, detention staff training is not directly required by the
10 Second Amended Judgment.

11 However, that does not mean that Defendants need not assess whether additional
12 or revised detention staff training is required to satisfy the Second Amended Judgment.
13 Paragraph 7 of the Second Amended Judgment provides: “All pretrial detainees confined
14 in the jails shall have ready access to care to meet their serious medical and mental health
15 needs.” In order to terminate the Second Amended Judgment, Defendants must prove
16 there is no current and ongoing constitutional violation regarding paragraph 7, *i.e.*, all
17 pretrial detainees in the Maricopa County Jails actually do have ready access to care to
18 meet their serious medical and mental health needs. Ready access to medical and mental
19 health care involves both medical and detention staff:

20 [D]eliberate indifference to serious medical needs of prisoners constitutes
21 the unnecessary and wanton infliction of pain proscribed by the Eighth
22 Amendment. This is true whether the indifference is manifested by prison
23 doctors in their response to the prisoner’s needs or by prison guards in
24 intentionally denying or delaying access to medical care or intentionally
25 interfering with the treatment once prescribed.

26 *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976) (internal quotations, citations, and
27 footnotes omitted). Defendant Arpaio is not relieved of all obligations under paragraphs
28 6, 7, and 8 merely because they fall primarily within the purview of Correctional Health
Services. Until the Second Amended Judgment is terminated, all of the Defendants will
be subject to enforcement of each of its provisions.

 Defendant Arpaio’s motion “requests that Plaintiffs be precluded from re-litigating
the issue of detention staff training as it pertains to mental health issues.” Dr. Burns’
recommendations do not attempt to revive terminated provisions; she merely suggests that
Defendants assess whether additional or different detention staff training should be

1 provided. If Defendants are unable to prove that all pretrial detainees have ready access
2 to care to meet their serious medical and mental health needs, both Defendant Arpaio and
3 Defendant Maricopa County Board of Supervisors are obligated to find and remove any
4 barriers to access, which may include inadequate mental health training for detention
5 staff. But that issue is not presently before the Court.

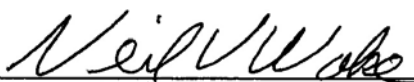
6 IT IS THEREFORE ORDERED that Defendant Arpaio's Motion Regarding
7 Detention Staff Training Relating to Mental Health Issues (Doc. 1949) is denied,
8 Defendant Maricopa County Board of Supervisors' Motion to Vacate June 14, 2011
9 Evidentiary Hearing (Doc. 1959) is granted without prejudice, and Plaintiffs' Motion for
10 an Order Adopting the Unopposed Recommended Remedies of the Court's Experts (Doc.
11 1963) is denied.

12 IT IS FURTHER ORDERED granting Plaintiffs' discovery request for counsel
13 and their medical expert to tour the Maricopa County Jails facilities, speak with pretrial
14 detainees and staff, and review records on-site, upon reasonable notice to Defendants
15 (Doc. 1953).

16 IT IS FURTHER ORDERED vacating the evidentiary hearing set for June 14,
17 2011.

18 IT IS FURTHER ORDERED setting a status conference for **9:30 a.m., June 14,**
19 **2011.** By **June 7, 2011,** the parties shall file a joint case management report stating (1)
20 whether there is need for an evidentiary hearing regarding nursing and/or physician
21 staffing and (2) whether there is need for an evidentiary hearing on any other matter at
22 this time.

23 DATED this 16th day of May, 2011.

24
25 
26 _____
Neil V. Wake
United States District Judge