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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Victor Antonio Parsons, et al.,

10 Plaintiffs,

11 v.

12 Charles L. Ryan, et al.,

13 Defendants.  
14

No. CV-12-0601-PHX-DKD

**ORDER**

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16 Defendants have moved for reconsideration of the Court's Order setting an order  
17 to show cause hearing where the Court will consider the imposition of a \$1,000 fine for  
18 each instance of non-compliance with an enumerated list of healthcare performance  
19 measures at specified locations ("Chronically Non-Compliant Location/PMs"). (Doc.  
20 2135) A response is not necessary. LRCiv. 7.2(g).

21 Motions for reconsideration should be granted only in rare circumstances.  
22 *Defenders of Wildlife v. Browner*, 909 F.Supp. 1342, 1351 (D.Ariz. 1995).  
23 "Reconsideration is appropriate if the district court (1) is presented with newly  
24 discovered evidence, (2) committed clear error or the initial decision was manifestly  
25 unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. 1J,*  
26 *Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9<sup>th</sup> Cir. 1993). Such motions  
27 should not be used for the purpose of asking a court "to rethink what the court had  
28 already thought through — rightly or wrongly." *Defenders of Wildlife*, 909 F.Supp. at

1 1351 (quoting *Above the Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101  
2 (E.D.Va. 1983)). Defendants are not entitled to reconsideration.

3 As the Court has repeatedly explained on the record, the Stipulation was not a  
4 promise to meet a sampling benchmark. It was a promise to provide the contracted  
5 service to every inmate. The Stipulation's benchmarks (now 85%) are for the purpose of  
6 determining whether a PM/Location is meeting the Stipulation's underlying requirement  
7 of care. The benchmark is the canary in the coal mine: if the benchmark is met, then the  
8 Stipulation deems the Defendants to be in compliance. If the benchmark is not met, then  
9 Defendants are not in compliance with the Stipulation and the Court's remedial power is  
10 in no way limited by the Stipulation's compliance percentage benchmark or sample size  
11 specification. Instead, the Court must take measures to ensure Defendants provide the  
12 bargained for benefit to each and every inmate.

13 The Court has provided Defendants over two years to try all of their proposed  
14 solutions for the Chronically Non-Compliant Location/PMs. Nothing has worked. Now,  
15 the Court must find a way to compel the necessary remedial action.

16 Finally, in response to Defendants' argument regarding a lack of resources to  
17 tabulate the failures to satisfy the Performance Measures, the Court notes that it is not  
18 ordering Defendants to hire anyone. How they accomplish compliance with this Court's  
19 Order is for Defendants to determine, not the Court. If Defendants determine that the  
20 only way to comply with this Order is to hire more staff, nothing in the Stipulation  
21 prevents them from doing so. (It is hard for the Court to accept this conclusion given that  
22 it appears from the Court's tour of the Lewis facility this day that there are current  
23 employees who are willing and able to work overtime but are precluded by management  
24 from doing so.)

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1           **IT IS THEREFORE ORDERED** denying Defendants' Motion for  
2 Reconsideration of the Court's \$1000 Sanction Order (Doc. 2135).

3           Dated this 13th day of July, 2017.

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7           David K. Duncan  
8           United States Magistrate Judge

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