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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Aaron Fisher, et al.,

10 Plaintiffs,

11 v.

12 IASIS Healthcare LLC, et al.,

13 Defendants.
14

No. CV-15-00872-PHX-JJT

ORDER

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16 On May 18, 2018, following the District Judge's referral (Doc. 179), the Court
17 held a telephonic hearing concerning three Joint Notices of Discovery Dispute (Docs.
18 162, 166, 170). This Order sets forth the Court's rulings on the discovery disputes
19 presented in the Joint Notices.

20 **I. LEGAL STANDARDS**

21 Federal Rule of Civil Procedure 26 provides that a party may obtain discovery
22 "regarding any nonprivileged matter that is relevant to any party's claim or defense and
23 proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). A "relevant matter"
24 under Rule 26(b)(1) is any matter that "bears on, or that reasonably could lead to other
25 matters that could bear on, any issue that is or may be in the case." *Oppenheimer Fund,*
26 *Inc. v. Sanders*, 437 U.S. 340, 351, 98 S. Ct. 2380, 57 L.Ed. 2d 253 (1978). In
27 determining proportionality, the court "consider[s] the importance of the issues at stake in
28 the action, the amount in controversy, the parties' relative access to relevant information,

1 the parties' resources, the importance of the discovery in resolving the issues, and
2 whether the burden or expense of the proposed discovery outweighs its likely
3 benefit.” Fed. R. Civ. P. 26(b)(1). “Information within this scope of discovery need not
4 be admissible in evidence to be discoverable.” *Id.*

5 A party may request documents “in the responding party’s possession, custody, or
6 control.” Fed. R. Civ. P. 34(a)(1). A request is adequate if it describes items with
7 “reasonable particularity”; specifies a time, place, and manner for the inspection; and
8 specifies the form or forms in which electronic information can be produced. Fed. R.
9 Civ. P. 34(b). “Thus, a request is sufficiently clear if it places the party upon reasonable
10 notice of what is called for and what is not.” *Richmond v. Mission Bank*, 2015 WL
11 1637835, at *2 (E.D. Cal. Apr. 13, 2015) (internal citation and quotation marks omitted).
12 The responding party must respond in writing and is obliged to produce all specified
13 relevant and nonprivileged documents, tangible things, or electronically stored
14 information in its “possession, custody, or control” on the date specified. Fed. R. Civ. P.
15 34(a). Alternatively, a party may state an objection to a request. Fed. R. Civ. P.
16 34(b)(2)(C).

17 **II. DISCUSSION**

18 In May 2015, a number of individuals (“Relators”) filed this qui tam action under
19 the False Claim Act on behalf of the United States, naming IASIS Healthcare LLC
20 (“IASIS”) and Health Choice of Arizona, Inc. (“HCA”) as Defendants.¹ The United
21 States declined to intervene. (Doc. 13). Relators are current and former employees of
22 Defendant HCA or one of its affiliates. (Doc. 109 at 2). HCA is a wholly owned
23 subsidiary of IASIS and contracts with the Arizona Health Care Cost Containment
24 System (“AHCCCS”), which is the agency that administers the State of Arizona’s
25 Medicaid program. (*Id.*). HCA provides healthcare services to Arizona Medicaid
26 enrollees through subcontracted providers. (*Id.*). This action concerns the State of
27 Arizona’s capitation payments to HCA, which include sums expressly allotted to

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¹ All other Defendants have been dismissed. (Doc. 109 at 35).

1 compensate HCA for federally mandated cost containment programs. (Doc. 166 at 2).
2 Relators state that “HCA has admitted that the prior authorization (‘PA’) of medical
3 services is one of those ‘core’ and ‘important’ programs for which AHCCCS paid HCA
4 administrative fees.” (*Id.*). Relators allege that HCA “decided to cheat on its PA
5 program by automatically approving tens of thousands of PA requests through a process
6 called ‘administrative approval,’ without performing any part of the required medical
7 necessity review; and then hiding their failures from the State.” (*Id.*).

8 There are a number of disputes regarding discovery requests contained in
9 Relators’ third set of Requests for Production of Documents (“RFP Set Three”) that were
10 served on Defendants on January 25, 2018. The Joint Notice filed on April 12, 2018
11 addresses RFP Set Three No. 11, along with a dispute concerning a Rule 30(b)(6)
12 deposition notice. (Doc. 162). The two Joint Notices (Docs. 166, 170) filed on April 25,
13 2018 concern RFP Set Three Nos. 8, 10, 12, and 13. For the reasons explained below,
14 the Court will deny Relators’ requests contained in the Joint Notices (Docs. 162, 166,
15 170).

16 **A. “Joint Notice of Discovery Dispute on Plaintiffs-Relators’ Requests for**
17 **Production of Documents, Set Three, and 30(B)(6) Deposition Notice”**
18 **(Doc. 162)**

19 On December 12, 2017, Relators issued a Rule 30(b)(6) Notice for HCA’s
20 testimony on:

21 The relationship between HCA and Instream (and/or IASIS
22 and Instream) including, contractual terms and obligations,
23 any personal, family or non-business relationship between
24 those who work or worked at or invested in HCA (or IASIS)
25 and those who work or worked at or invested in Instream.

26 (Doc. 162 at 3).

27 In RFP Set Three No. 11, Relators requested:

28 All Documents and Communications that relate to any
contract, relationship, or agreement between InStream, and
HCA and/or IASIS, including the actual contracts and
communications (whether internal to IASIS, interdenial to
HCA, between IASIS and HCA, or external) about the
contracts or relationship with InStream.

1 (*Id.*). Relators assert that the above documents and testimony “will demonstrate the
2 financial motivation as to why HCA failed to perform the required PA cost control
3 services—it hired an incompetent vendor who had a financial relationship with IASIS
4 and/or its executives.” (*Id.*). At the hearing, Relators stated that they deposed the Chief
5 Operating Officer of HCA, who testified that the Chief Executive Officers of IASIS and
6 InStream were friends prior to IASIS entering into the contract with IASIS. Relators
7 have not presented any evidence suggesting that any of IASIS or HCA’s executives had a
8 financial conflict of interest.

9 In objecting to the above requests, Defendants assert that the requests are premised
10 on “Relators’ speculative and wholly novel theory [that] is not based on facts” and
11 “amount to a fishing expedition.” (*Id.* at 4-5). The Court concurs. It is undisputed that
12 Defendants have produced the InStream contract. Relators have failed to persuade the
13 Court that a financial conflict of interest exists or how the existence of a financial conflict
14 of interest within IASIS or HCA would be materially relevant to the Court’s adjudication
15 of the remaining count in this case, Count II of the Third Amended Complaint.² (Doc.
16 109 at 35). After considering the factors set forth in Federal Rule of Civil Procedure
17 26(b)(1), the Court finds that requiring Defendants to comply with Relators’ December
18 12, 2017 Rule 30(b)(6) notice and to produce further discovery pursuant to RFP Set
19 Three No. 11 would not be proportional to the needs of the case. Relators’ request for an
20 order compelling such discovery will be denied. *See Calderon v. U.S. Dist. Court for the*
21 *N. Dist. of Cal.*, 98 F.3d 1102, 1106 (9th Cir. 1996) (discovery is not to be used for a
22 fishing expedition to investigate mere speculation).

23 **B. “Joint Notice of Discovery Dispute on Plaintiffs-Relators’ Requests for**
24 **Production of Documents, Set Three [Nos. 8 and 12]” (Doc. 166)**

25 RFP Set Three No. 8 requests “All Documents presented by HCA to AHCCCS
26 each payment period, including but not limited to certifications and patient census, to

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28 ² Count II “asserts violations of the [False Claim Act] based on claims submitted
for payment that certify compliance—expressly or impliedly—with various contractual
and regulatory requirements material to government funds in violation of 31 U.S.C. §§
3729(a)(1)(B).” (Doc. 109 at 15).

1 obtain capitation payments.” (Doc. 166 at 2).

2 RFP Set Three No. 12 requests “All Documents showing the amount paid by
3 AHCCCS to HCA for each payment period.” (*Id.* at 3).

4 Defendants objected to RFP Set Three Nos. 8 and 12 on the ground that they
5 duplicated Relators’ first set of RFPs (“RFP Set One”). (*Id.*). Defendants explain that
6 RFP Set One No. 9 requested:

7 All communications to AHCCCS regarding compliance or
8 lack of compliance with Health Choice’s MCO contract, the
9 existence of a ‘Gold Card’ - type system of waiver of Prior
10 Authorization, timely payment of claims, timely and
11 consistent contracting and credentialing of providers, medical
12 necessity of services provided and reported as ‘paid’ on
13 encounter reports, and processes for handling of Prior
14 Authorization requests.

12 (*Id.* at 4 n.3). Defendants also explain that RFP Set One No. 10 requested “[a]ll
13 certifications of any kind provided by Health Choice to AHCCCS.” (*Id.* at 4).
14 Defendants state that on February 15, 2018, they produced deliverables relevant to
15 allegations in the Complaint, “including deliverables related to prior authorization,
16 claims, payment, credentialing, and audit functions[.]” (*Id.*). In light of this prior
17 production, Defendants assert that they have “made a complete, proportionate production
18 of relevant materials responsive to RFP 8, Set Three, to the extent they exist” (*Id.*).
19 The Court finds that RFP Set Three No. 8 duplicates RFP Set One Nos. 9 and 10.
20 Under Federal Rule of Civil Procedure 26(b)(2)(C), the Court must limit discovery that is
21 “unreasonably cumulative or duplicative.” Fed. R. Civ. P. 26(b)(2)(C). In addition,
22 Relators have not persuaded the Court that Defendants are in possession of additional
23 documents responsive to RFP Set Three No. 8 that are relevant and proportional to the
24 needs of the case. Relators’ request for an order compelling a response to RFP Set Three
25 No. 8 will be denied.

26 In responding to RFP Set Three No. 12, Defendants produced a spreadsheet
27 showing the amount paid by AHCCCS to HCA for each payment period during the
28 relevant time period. (Doc. 166 at 3). The spreadsheet reflects deposits received

1 electronically directly into HCA’s account. Relators do not specify what other
2 documents ought to be produced and have not presented any evidence that any additional
3 documents exist that would be responsive to RFP Set Three No. 12. Relators’ request for
4 an order compelling further response to RFP Set Three No. 12 will be denied.

5 **C. “Joint Notice of Discovery Dispute of Plaintiffs-Relators’ Requests for**
6 **Production of Documents of Documents, Set Three (RFP Nos. 10 and 13)”**
7 **(Doc. 170)**

8 In RFP Set Three No. 10, Relators requested:

9 All Documents that reflect all paid claims for which a prior
10 authorization was approved through “admin approval,”
11 including the date the prior authorization was received, the
12 date the prior authorization was approved, the date the claim
13 was paid, the amount paid, name of the Provider, and the type
14 of service that was requested and paid.

15 (Doc. 170 at 3-4).

16 RFP Set Three No. 13 states:

17 For all services and procedures reimbursed by HCA that
18 required prior authorization, including those performed by
19 Providers holding a Special Status with HCA, provide data
20 sufficient to identify:

- 21 a) The date the prior authorization request was originally
22 submitted to HCA;
- 23 b) The nature of the service requested;
- 24 c) The name and identification of the Provider;
- 25 d) The patient’s first name, last name, and middle initial;
- 26 e) The disposition of the prior authorization; and
- 27 f) The date the prior authorization was adjudicated.

28 (*Id.* at 4). Relators note that Defendants recently “produced some PA data for November
2012 through February 2016, including the following categories of data: line of business,
authorization number, authorization create date, authorization initiated date, event
classification, authorization status, service, procedure low, procedure high, service status,
service reason determination, verbal notice date, written notice date, service last update
date.” (*Id.*). Relators explain that Defendants did not produce (i) the time stamp

1 information for each request; (ii) the identity of the reviewer; and (iii) the provider or
2 patient information. (*Id.*). Yet RFP Set Three Nos. 10 and 13 do not request the time
3 stamp information for each prior authorization request or the identities of the individual
4 reviewing the PA requests.³ Relators' request for this information will therefore be
5 denied. Regarding the request in RFP Set Three No. 13 for the identities of the providers
6 and patients, the Court does not find that the information is sufficiently relevant and
7 proportional to the needs of the case.

8 Relators also state that Defendant "provided PA data for only the PA requests that
9 were 'administratively approved.'" (*Id.* at 5). Relators contend that "without data on
10 requests that were adjudicated through other approvals, it is impossible to confirm
11 Defendants' posture on the use of admin approval or prove Relators' allegations that
12 medical necessity review was systemically bypassed." (*Id.*). Relators seek an order
13 compelling Defendants to produce PA data regarding requests that were adjudicated
14 through other approvals. (*Id.*). Yet, as the Court explained at the November 1, 2017
15 hearing, the issue in this case is "whether the decisions individually made or collectively
16 made as part of a program by the defendants violated the False Claims Act. Those
17 decisions must be evaluated independently, not in comparison to another set of
18 decisions[.]" (Doc. 153 at 45-46). Relators' request for an order compelling further
19 responses to RFP Set Three Nos. 10 and 13 will be denied.

20 III. CONCLUSION

21 Based on the foregoing,

22 **IT IS ORDERED** denying Plaintiff's requests for an order to compel the
23 discovery set forth in the parties' Joint Notices of Discovery Dispute. (Docs. 162, 166,
24 170).

25 Dated this 18th day of May, 2018.

26 
Eileen S. Willett
United States Magistrate Judge

27 ³ Relators confirmed at the hearing that the "time stamp" information is separate
28 from the "date the authorization request was originally submitted to HCA" that was
requested in RFP Set Three No. 13. Relators explained that they learned of the existence
of the "time stamp" information at depositions taken after the issuance of RFP Set Three.