

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CARLOS PEREZ, et al.

Plaintiffs,

No. 05-05241 JSW

v.

**ORDER GRANTING MOTION TO
ENFORCE STIPULATED
INJUNCTION AND COURT
ORDER RE EXPERTS**

MATTHEW CATE, et al.,

Defendants.

INTRODUCTION

Now before the Court for consideration is the Motion to Enforce Stipulated Injunction and Court Order re Experts filed by Plaintiffs. Having considered the parties' papers, relevant legal authority, the record in this case, and having had the benefit of oral argument, the Court **HEREBY GRANTS** Plaintiffs' motion.

BACKGROUND

The background and history of the settlement of this class action involving dental care within the California prison system is well known to the parties and shall not be repeated here. The instant dispute arises because, after the parties entered into the Stipulated Injunction, Defendants began to transfer prisoners to out-of-state facilities. Defendants contend that no class members have been transferred out-of-state. Plaintiffs are concerned that Defendants' screening process is inadequate.¹

¹ The Court representatives presented a report to the Court in October 2007, in which they expressed their view that the screening process then in place was inadequate. (Declaration of Alison Hardy, Ex. A.) The screening process that was the subject of the 2007 Report has been revised. (*Id.*, Ex. H.)

1 The Court has advised Plaintiffs that if they seek to amend the Stipulated Injunction to
2 include prisoners who have been transferred out-of-state, they must file a motion to do so. In
3 anticipation of that motion, the Court ordered the parties to engage in a meet-and-confer
4 process. As part of the meet-and-confer process, Plaintiffs requested that Defendants produce
5 dental files for prisoners who have been deemed eligible for transfer. Although Defendants
6 have produced those documents, Defendants have taken the position that the Experts/Court
7 Representatives should not review or opine on them. (See Hardy Decl., ¶ 15, Ex. J.)

8 ANALYSIS

9 On August 31, 2006, the Court issued an Order appointing Drs. Shulman and Scalzo as
10 Experts in this case. Pursuant to that Order, “[a]t the request of any party or the Court, the
11 experts shall evaluate Defendants’ Dental Implementation Plan [the “Implementation Plan”]
12 and their Dental Policies and Procedures [the “Policies”], to advise the Court whether they are
13 sufficient to satisfy Defendants’ obligations as set forth in the Stipulation filed concurrently
14 with this Order.” (Declaration of Charles Antonen (“Antonen Decl.”), Ex. B, ¶ 1.) The August
15 31 Order also stated that the experts shall, at the request of either party or the Court, evaluate
16 Defendants’ compliance with the Implementation Plan and the Policies, and any modifications
17 to the Implementation Plan and Policies, whether proposed by Plaintiffs or Defendants. (*Id.*,
18 Ex. B, ¶¶ 2-4.) In order to fulfill their duties under the August 31 Order, the experts “shall have
19 access to ... all relevant documents ... to the extent such access is reasonably needed to fulfill
20 their obligations.” (*Id.*, Ex. B, ¶ 12.)

21 On February 8, 2007, the Court issued a further Order in which it designated the experts
22 Court Representatives in order to assist in the coordination of this matter with *Coleman v.*
23 *Schwarzenegger*, CIV-S-90-0520-LKK (JFM) (E.D. Cal.) and *Plata v. Coleman*, C-01-1351
24 TEH (N.D. Cal.). (Antonen Decl., Ex. C.) That Order provides that the Court Representatives’
25 “duties set forth herein may be further specified, expanded or modified only by Order of this
26 Court.” (*Id.*, Ex. C, ¶ 6.) The February 8 Order also provided that the experts, as Court
27 Representatives, “shall have access to ... all relevant documents, ... to the extent such access is
28 reasonably necessary to fulfill their obligations.

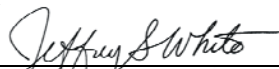
1 The Court repeatedly has expressed its concern that Defendants may be transferring
2 existing members of the *Perez* class to out-of-state facilities. Although Plaintiffs have brought
3 the instant motion, in order to assist the Court and in anticipation of Plaintiffs' motion on this
4 issue, pursuant to paragraph 6 of the February 8, Order, the Court HEREBY ORDERS the
5 Court Representatives to prepare a report on Defendants' revised screening process. That report
6 shall be filed on or before December 4, 2008.

7 Based on argument and colloquy at the hearing, it also appears that allowing the Court
8 Representatives access to dental records is reasonably necessary to prepare this report.
9 Accordingly, it is FURTHER ORDERED, that by no later than November 20, 2008, Defendants
10 shall produce copies of dental records for 117 inmates that were endorsed for transfer to an out-
11 of-state facility during the month of July 2008. If any these 117 inmates prisoners still are
12 housed in CDCR facilities within California, Defendants shall produce the entirety of an
13 inmates' dental record. If any of the 117 inmates have been transferred to an out-of-state
14 prison, Defendants shall produce copies of the dental records in accordance with the scope of
15 consent previously obtained by Plaintiffs' counsel, or in accordance with any future consent
16 obtained by Plaintiffs. If the Court Representatives deem it reasonably necessary to review
17 medical records, they shall file a statement to such effect with the Court and serve it on
18 Plaintiffs and Defendants.

19 It is FURTHER ORDERED that Defendants may file any objections or comments to the
20 Court Representatives' report on the revised screening procedure by no later than December 15,
21 2008. Plaintiffs may file a response by no later than December 22, 2008.

22 **IT IS SO ORDERED.**

23
24 Dated: October 20, 2008



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE