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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THE ESTATE OF RUBEN NUNEZ
by and through its successor-in-
interest LYDIA NUNEZ, ALBERT
NUNEZ, and LYDIA NUNEZ,
Plaintiffs,
v.
COUNTY OF SAN DIEGO,
CORRECTIONAL PHYSICIANS
MEDICAL GROUP, INC., et al.,
Defendants.

Case No.: 16cv1412-BEN-MDD

**ORDER DENYING PLAINTIFFS’
MOTION TO ENFORCE COURT’S
ORDER (ECF NO. 211) AND FOR
AN ORDER TO SHOW CAUSE
REGARDING SANCTIONS**

[ECF No. 229]

BACKGROUND

Once again, the Court must attempt to clean up a mess caused entirely
by Defendant County of San Diego’s failure to identify properly documents in
its possession subject to discovery requests by Plaintiffs. This matter has
been the subject of several discovery disputes between Plaintiffs, Defendant
County of San Diego and Defendant Correctional Physician’s Medical Group,

1 Inc. (“CPMG”). (ECF Nos. 192, 210, 211). The documents at issue first were
2 identified as “Psychiatric Summary Reports” by Defendant County in
3 connection with a discovery dispute between Plaintiffs and Defendant County
4 of San Diego filed on September 1, 2017. (ECF No. 176). The Psychiatric
5 Summary Reports were described as follows:

6 Although the County has declined to produce documents responsive to
7 Plaintiffs’ Requests for Production (Set Two), nos. 39 and 41 (the last
8 four items on the privilege log, CSD04190 – CSD04194, each entitled
9 “Psychiatric Summary Monitoring Report”), it has done so because it
10 believes these documents implicate the rights of third parties, namely
11 defendants CPMG, Dr. Naranjo, and Dr. Hansen. CPMG objects to the
12 County’s release of the Psychiatric Summary Monitoring Reports to
13 Plaintiffs and has asserted this objection on behalf of CPMG, Dr.
14 Naranjo, and Dr. Hansen. Because the Psychiatric Summary
15 Monitoring Reports are at issue in the Plaintiffs’ forthcoming joint
16 discovery motion with CPMG, Plaintiffs respectfully direct the Court’s
17 attention to that joint motion with respect to these documents. *See*
18 Declaration of Grace Jun at ¶¶ 6 – 11.

19 (ECF No. 176 at 3). Specifically, Ms. Jun declared:

20 During our meeting, Mr. Kish [counsel for Defendant County] informed
21 me that four separate documents, each entitled “Psychiatric Monitoring
22 Summary Report” for a different time period, implicated the privileges
23 and privacy rights of third-parties, including Defendants CPMG, Dr.
24 Naranjo, and Dr. Hansen. Mr. Kish further informed me that the
25 County had no objection to producing these documents to Plaintiffs
26 pursuant to a protective order, but the County was concerned about the
27 effect of third-parties' rights and privilege. The County identified the
Psychiatric Monitoring Summary Reports as documents responsive to
Plaintiffs' RFP nos. 39 and 41.

(ECF No. 176-3 at ¶7). The Court was informed that Plaintiffs and CPMG
would bring a further motion before the Court regarding these “Psychiatric
Summary Reports.” Accordingly, the Court did not address these documents

1 in resolving the dispute between Plaintiffs and Defendant County. (*See* ECF
2 No. 186).

3 The discovery dispute between Plaintiffs and Defendant Correctional
4 Physicians Medical Group, Inc. (“CPMG”) was filed on September 15, 2017.
5 (ECF No. 190). That motion, among other things, presented a dispute
6 regarding “Quarterly Reports” created by CPMG but provided to Defendant
7 County. At that point, Plaintiffs and Defendant County believed that the
8 Psychiatric Summary Reports withheld by Defendant County were “the same
9 as the “Quarterly Report” documents, different only in name.” (ECF No. 190
10 at 11 n.2; ECF No. 233 at 2).¹ On September 21, 2017, the Court determined
11 that one of the Quarterly Reports was relevant and ordered the production of
12 that Quarterly Report by CPMG to Plaintiffs. (ECF No. 192 at 3-5)

13 On October 25, 2017, Plaintiffs moved *ex parte* for an Order clarifying
14 the Court’s September 21 Order. (ECF No. 210). Plaintiffs asserted that the
15 County continued to refuse to produce the Psychiatric Summary Reports
16 without explanation. (*Id.*). On October 26, 2017, without waiting for a
17 response from the County, this Court ordered the production of the
18 Psychiatric Summary Reports, stating:

19 In issuing the Order regarding the underlying discovery dispute [192](#) ,
20 the Court was under the impression that the Psychiatric Summary
21 Reports were part of the Quarterly Reports at issue. See [190](#) at 10-11.
22 The Court ordered those documents produced. Accordingly, the
23 Psychiatric Summary Reports must be produced to Plaintiffs within 5
business days absent agreement by the parties or a filed opposition by
Defendants and further Order of the Court.

24 (ECF No. 211). On October 30, 2017, the County filed its Opposition in which
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27 ¹ The Court will refer to pagination supplied by CM/ECF rather than original pagination
throughout.

1 it admitted that it incorrectly identified the Psychiatric Summary Reports as
2 the same as the Quarterly Reports received from CPMG. (ECF No 218 at 2).
3 In fact, according to the County, the Psychiatric Summary Reports were
4 prepared by its staff and not by CPMG. (*Id.*). The Court overruled the
5 County's objections to production of these Psychiatric Summary Reports and
6 ordered them to be provided to Plaintiff. (ECF No. 210).

7 That gets us to today. Plaintiff filed the instant motion on November
8 20, 2017, seeking an order compelling Defendant County to produce CPMG
9 Quarterly Reports in its possession. (ECF No. 229). Defendant County
10 responded on November 28, 2017. (ECF No. 233). Plaintiff replied on
11 November 30, 2017. (ECF No. 235). Defendant County filed a further
12 response on December 6, 2017. (ECF No. 237). In its responsive pleadings,
13 Defendant County acknowledges that it has produced the County's
14 Psychiatric Summary Reports, declines to produce CPMG Quarterly Reports
15 as that matter was addressed by the Court on September 21, 2017, but now
16 has identified new documents, "Psychiatric Peer/Record Review(s),"
17 completed by CPMG regarding CPMG's medical providers. (ECF No. 233 at 5
18 n.2; ECF No. 233-1 at ¶ 4). Defendant County has declined to produce those
19 documents but has offered them for *in camera* review. As a consequence of
20 Defendant County's intransigence, Plaintiffs seek sanctions.

21 DISCUSSION

22 Having analyzed and ruled on this dispute repeatedly, the Court will
23 not engage in a further rehash of its reasons for ordering certain documents
24 to be disclosed. Plaintiffs accuse Defendant County of gamesmanship and
25 has good reason to do so. The Court is of the impression, however, that it is
26 not gamesmanship that got us here, it is a lack of diligence and competence.

27 Defendant County should have properly investigated and identified the

1 documents in its possession prior to the dispute on September 1, 2017. In
2 reviewing the docket in connection with this dispute, the Court notes that the
3 County's privilege log identifies the Psychiatric Summary Reports as created
4 by the County Sheriff's Medical Division. (See ECF No. 176-2 at 4). Counsel
5 for Defendant County, for some reason, misidentified those records as being
6 Quarterly Reports provided to the County by CPMG. The Court is not
7 convinced that the misidentification was intentional but it does reflect a
8 cavalier attitude that is troubling.

9 Compounding the lack of diligence that resulted in the misidentification
10 of the County's Psychiatric Summary Reports as being the same as the
11 Quarterly Reports prepared by CPMG, we now have the late discovery of
12 "Psychiatric Peer/Record Review(s)" purportedly created by CPMG but in the
13 possession of Defendant County. As the Court found regarding CPMG
14 Quarterly Reports, these records cannot be privileged inasmuch as they were
15 provided to the County. (See ECF No. 192 at 3-5). The Court declines to
16 review the records *in camera* but will order that these records, regardless of
17 whether they are Quarterly Reports or Psychiatric Peer/Record Reviews, be
18 disclosed to Plaintiffs to the extent that they refer to Ruben Nunez's
19 treatment and death and/or refer to Defendants Drs. Naranjo and/or Hansen.

20 As the County's conduct appears more incompetent than intentional,
21 the Court declines to issue an order to show cause why Defendant County
22 should be sanctioned.

23 CONCLUSION

24 Plaintiff's motion is **GRANTED IN PART AND DENIED IN PART**.
25 Defendant County is **ORDERED** to produce excerpts of any CPMG
26 Quarterly Reports or any CPMG Psychiatric Peer/Record Reviews in its
27 possession to the extent that they refer to the treatment and death of Ruben

1 Nunez and/or refer to Drs. Naranjo and/or Hansen within 14 days of this
2 Order. The Court declines to issue an order to show cause why Defendant
3 County should be sanctioned at this time.

4 **IT IS SO ORDERED.**

5 Dated: December 13, 2017



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7 Hon. Mitchell D. Dembin
United States Magistrate Judge

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