

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

V.

GAVIN NEWSOM, et al.,

Defendants.

No. 2:90-cv-0520 KJM DB P

ORDER

As required by court order, this matter came on for further telephonic status conference on April 17, 2020 for further updates on defendants' response to the coronavirus pandemic and its impact on *Coleman* class members. The court made several orders, which are confirmed by this written order.

I. DEFENDANTS' STRATEGIC PLAN

By order filed April 10, 2020, the court directed defendants to file a strategic plan aimed at achieving compliance, to the maximum extent possible, with the U.S. Centers for Disease Control and Prevention (CDC) Interim Guidance on Management of Coronavirus Disease (2019)

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1 (COVID-19) in Correctional and Detention Facilities (CDC Guidance).¹ ECF No. 6600 at 2. The
2 order specifically provides:

3 The plan should include objectives and timelines for defendants'
4 plans for housing of *Coleman* class members who are not being
5 granted early release from the California Department of Corrections
6 and Rehabilitation (CDCR), including those most at risk for COVID-19. It should also provide for continuity of mental health care,
including access to clinically indicated levels of mental health care
and attendant programming as outlined in the Program Guide.

7 *Id.*

8 On April 16, 2019, defendants filed their Strategic COVID-19 Management Plan, ECF
9 No. 6616, accompanied by twenty-eight attachments. ECF No. 6616-1. At the status conference,
10 plaintiffs noted the plan as presented does not contain the objectives and timelines called for by
11 the court's order, nor does it include a specific plan for housing medically vulnerable members of
12 the plaintiff class. The court's initial review also suggests an absence of specific goals and
13 objectives and no identification of the expected duration of the plan or aspects thereof; defendants
14 have signaled, consistent with representations made at the April 10, 2020 status conference, they
15 currently see "no horizon" marking the plan's end. *See, e.g.*, Reporter's Transcript of
16 Proceedings (RT), April 10, 2020, ECF No. 6601, at 37:7-38:17. Plaintiffs requested until
17 Monday, April 20, 2020, to file a written response to the plan. That request is granted, with the
18 response due by 5 p.m. on that date. Following filing of plaintiffs' response, defendants' may file
19 any reply by 5 p.m. on Wednesday, April 22, 2020. The plan will then be taken under review by
20 the court.

21 The plan does include a number of sub-plans for management of the delivery of mental
22 health care and programming required by the Program Guide during the COVID-19 pandemic.
23 At the status conference, the Special Master represented that these sub-plans represent temporary
24 departures from certain Program Guide requirements and that the parties, under his supervision,
25 are working on a stipulation that identifies with specificity those departures. He anticipates this
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27 ¹ *See* <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

1 stipulation will be presented to the court within ten days. Good cause appearing, the court will
2 direct that it be filed not later than Friday, May 1, 2020.

3 At the last status conference, the parties represented that defendants have provided
4 plaintiffs and the Special Master a detailed list of all class members with at least one COVID-19
5 risk factor. The absence of a detailed plan for housing class members under the current
6 circumstances, particularly those who have been identified as medically vulnerable, is of grave
7 concern. At the status conference, all parties agreed that review of these housing issues on as
8 granular a level as possible is a necessary next step. Good cause appearing, that review is
9 referred to the coronavirus task force for expedited consideration.²

10 **II. DEPARTMENT OF STATE HOSPITAL (DSH) TRANSFERS**

11 In the April 10, 2020 order, the court set an evidentiary hearing for Tuesday, April 21,
12 2020, on the issue of class members' access to DSH inpatient programs. ECF No. 6600 at 4. The
13 court also authorized plaintiffs to conduct limited expedited discovery. *Id.* Prior to the status
14 conference, plaintiffs informed the court of a discovery dispute that arose during their meet and
15 confer process over discovery requests plaintiffs had served. Good cause appearing, not later
16 than Monday, April 20, 2020, plaintiffs shall provide those discovery requests and defendants'
17 responses and objections thereto to the courtroom deputy by email. After review of these
18 documents the court will, as necessary, set the matter for telephonic hearing.

19 On April 15, 2020, defendants filed a motion for reconsideration of the order setting
20 evidentiary hearing or, in the alternative, a request for clarification about matters related to the
21 procedures to be followed at hearing. At the status conference, the parties informed the court
22 they had stipulated to continue the hearing for a period of thirty days subject to close monitoring
23 by the Special Master of all referrals, rejections and completed transfers to and from the DSH
24 inpatient programs. Good cause appearing, the evidentiary hearing will be continued to May 19,
25 2020 at 10:00 a.m. Between now and then, the Special Master will provide data from his

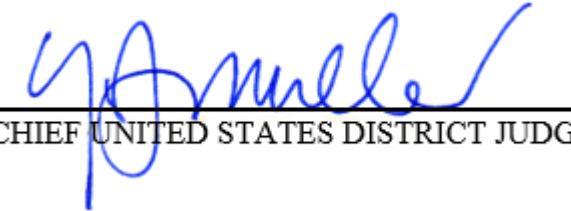
26 ² As used in this order, expedited means that this task shall now be given the highest priority by
27 the task force, given the groundwork already laid. The court recognizes the potentially laborious
28 and time-consuming nature of the work involved and expects all parties to approach it with the
same diligence they have applied to the other productive work they have undertaken to date.

1 monitoring of DSH transfers to the parties and to the court at a time and in a format he deems
2 appropriate. Defendants' request for clarification of the procedures for and scope of hearing will
3 be addressed in a separate order.

4 In accordance with the above, IT IS HEREBY ORDERED that:

- 5 1. Plaintiffs shall file a response to defendants' April 16, 2020 strategic plan not later
6 than Monday, April 20, 2020, at 5:00 p.m.
- 7 2. Also not later than Monday, April 20, 2020, plaintiffs shall provide to the courtroom
8 deputy the discovery requests, responses, and objections that are the subject of dispute.
9 Thereafter, the court will set the matter, as necessary, for telephonic hearing.
- 10 3. The evidentiary hearing set for Tuesday, April 21, 2020 is CONTINUED to Tuesday,
11 May 19, 2020, at 10:00 a.m. Until May 19, the Special Master shall closely monitor
12 all referrals, rejections and completed transfers to and from the DSH inpatient
13 programs, and shall provide data from his monitoring to the court and to the parties at
14 a time and in a format he deems appropriate.
- 15 4. This matter is maintained for further status conference on Friday, May 1, 2020, at
16 10:00 a.m.

17 DATED: April 17, 2020.

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19 CHIEF UNITED STATES DISTRICT JUDGE

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