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17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE EASTERN DISTRICT OF CALIFORNIA
19 SACRAMENTO DIVISION

20 **RALPH COLEMAN, et al.,**

21 Plaintiffs,

22 v.
23

24 **GAVIN NEWSOM, et al.,**

25 Defendants.
26

27 Case No. 2:90-cv-00520 KJM-DB (PC)
28

**FOURTH STIPULATION AND ORDER
TO EXTEND THE APRIL 14, 2017
ORDER WAIVING STATE LAW
REGARDING L-WING AT CALIFORNIA
MEDICAL FACILITY**

Judge: Hon. Kimberly J. Mueller

1 On April 14, 2017, the Court approved the parties' stipulation to waive state licensing
2 requirements so that CDCR could convert 37 cells on the first floor of the L-Wing at the
3 California Medical Facility (L-1) into 70 temporary unlicensed Intermediate Care Facility (ICF)
4 level-of-care beds and two observation and restraint rooms for high-custody inmate-patients
5 referred for ICF care. (ECF No. 5605.) In the stipulation, Defendants agreed, *inter alia*, "to staff
6 and operate L-1 to offer a minimum 12 hours per day of out-of-cell time, including weekends
7 (including but not limited to treatment hours, socialization yard, and other time out of cell)" and
8 "to limit double-celling on L-1 to the extent possible." *Id.* at 3. The Court approved the parties'
9 stipulation on two conditions: (1) "Defendants shall report to the Special Master monthly as to
10 whether there are any inmate-patients in L-1 wing who have been custodially approved by CDCR
11 and clinically cleared by the Department of State Hospitals (DSH) for placement in one of the
12 DSH facilities and, if so, why any such inmate-patient is in the L-1 Wing rather than in a DSH
13 facility consistent with the patient's Least Restrictive Housing designation or other appropriate
14 DSH facility;" and (2) "the parties are directed to work with the Special Master to bring the plans
15 for the L-1 Wing unit into compliance, as necessary and as expeditiously as possible, with the
16 requirements of the October 18, 2007 order [ECF No. 2461]." (*Id.* at 5.)

17 The period covered under the April 14, 2017 order waiving state law has been extended
18 three times, through April 15, 2021. (ECF Nos. 5950, 6606, and 6917.) Consistent with the
19 Court's order, CDCR has provided monthly reports to the Special Master and Plaintiffs with
20 patient-level data showing offered out-of-cell time, offered structured treatment hours, and
21 program cancellations. The third extension continuing the waiver to April 15, 2021 recognized
22 CDCR's continued need for the beds in L-1, Plaintiffs' need for additional assurances that CDCR
23 consistently offers patients in L-1 twelve hours of daily out-of-cell time, and COVID-19's
24 ongoing impact on Defendants' ability to provide a workable solution to ensure that CDCR
25 consistently offers patients in L-1 twelve hours of daily out-of-cell time. (ECF No. 6917 at 2.)

26 The third extension required Defendants to submit, within one month of the order, a plan
27 for additional structured treatment subject to monitoring by the Special Master. (ECF No. 6917 at
28 3). The third extension also provided that the parties would revisit the need for a further

1 extension of the waiver after five months. (*Id.*) Defendants timely submitted the required plan.

2 The parties have conferred regarding the need for a fourth extension of the April 14, 2017
3 order waiving state licensing laws concerning L-1. The beds in L-1 are presently needed to
4 provide additional inpatient care pending planned construction and activation of new flexible
5 beds. CDCR's goal is to end its reliance on unlicensed units to house and treat *Coleman* class
6 members needing inpatient mental health care. In furtherance of that goal, Defendants plan to
7 immediately begin developing a long-term plan to deactivate the 70 beds in L-1 and replace the
8 unit with fully licensed inpatient beds at the number and custodial level required by patient need.
9 Defendants will work closely with the Special Master, with Plaintiffs' input as necessary, to
10 develop the plan and will provide that plan to the Special Master and Plaintiffs no later than
11 twelve months from the date of this order. This timeframe is necessary for Defendants to develop
12 a long-term plan in response to the Special Master's upcoming inpatient program monitoring and
13 anticipated unmet bed needs assessment.

14 The Special Master and Plaintiffs agree with CDCR's goal to deactivate L-1 and replace it
15 with an appropriate number of licensed inpatient beds, and with the timeline to develop a plan to
16 achieve that goal. Accordingly, the parties jointly request that the Court extend the April 14,
17 2017 order waiving state law from April 15, 2021 for an additional eighteen months. Good cause
18 presented to the Court and appearing, the parties stipulate that the Court should extend the
19 waivers of the licensing requirements described below for an additional eighteen months.

20 **IT IS STIPULATED AND ORDERED AS FOLLOWS:**

21 1. The following state licensing requirements shall be waived with respect to the 70
22 temporary Intermediate Care Facility beds and two observation and restraint rooms in the
23 L-Wing, L-1, at California Medical Facility:

24 A. California Health and Safety Code section 1250(j); and

25 B. California Code of Regulations, Title 22, sections 79501–79861.

26 2. The waiver is extended eighteen months to October 15, 2022;

27 3. Within one month from the date of this order, Defendants shall provide the Special
28 Master and Plaintiffs with an update of the November 2020 plan for additional structured

1 treatment, taking into account the potential need to limit the L-1 census to reduce double-celling
2 and/or augment staffing in order to achieve the full minimum requirement of twelve hours of out
3 of cell time per day, including weekends, for patients not on quarantine status for whom
4 Defendants shall also report on measures taken to mitigate the quarantine, subject to monitoring
5 by the Special Master; and shall provide additional updates every month thereafter; Defendants'
6 update shall include a report on how many patients are double-celled in the unit;

7 4. Defendants shall work closely with the Special Master, with input from Plaintiffs
8 as appropriate, to develop a plan to deactivate the beds in L-1 and replace the unit with fully
9 licensed inpatient beds at the number and custodial level required by patient need;

10 5. The plan shall be provided to the Special Master and Plaintiffs within twelve
11 months from the date of this order;

12 6. Once the plan is provided to the Special Master and Plaintiffs, the parties shall
13 discuss a timeline for implementation and determine whether a further waiver for full
14 implementation of the plan beyond October 15, 2022, is required.

15 The Special Master has reviewed and approves this stipulation.

16 **IT IS STIPULATED.**

17 Dated: April 15, 2021

MATTHEW RODRIQUEZ
Acting Attorney General of California
DAMON MCCLAIN
Supervising Deputy Attorney General

20 */s/ Elise Owens Thorn* _____
21 ELISE OWENS THORN
22 Deputy Attorney General
23 Attorneys for Defendants

24 Dated: April 15, 2021

ROSEN BIEN GALVAN & GRUNFELD LLP

25 */s/ Marc Shinn-Krantz* _____
26 Marc J. Shinn-Krantz
27 Attorneys for Plaintiffs

1 **IT IS SO ORDERED.**

2 Dated: April 21, 2021.

3 
4 CHIEF UNITED STATES DISTRICT JUDGE

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