

1  
2  
3  
4  
5  
6  
7

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 RALPH COLEMAN, et al.,  
12 Plaintiffs,  
13 v.  
14 GAVIN NEWSOM, et al.,  
15 Defendants

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

## ORDER

18 As set by court order the court held a Special Status Conference on August 4, 2021  
19 to address two emails sent by defense counsel to the Special Master, one addressing staffing tours  
20 by defense experts and one discussing a schedule for continuous quality improvement rounding  
21 by defendants. *See* ECF Nos. 7255, 7261. Lisa Ells, Esq., Ernest Galvan, Esq., Cara Trapani,  
22 Esq., and Steven Fama, Esq. appeared as counsel for plaintiffs. Supervising Deputy Attorney  
23 General Damon McLain, Senior Assistant Attorney General Monica Anderson, and Deputy  
24 Attorney General Elise Thorn appeared as counsel for defendants. In addition, as required by  
25 court order, ECF No. 7255, and identified by defendants, California Department of Corrections  
26 and Rehabilitation (CDCR) Secretary Kathleen Allison, CDCR Undersecretary for Health Care  
27 Services Dr. Diana Toche, and CDCR Deputy Director for Mental Health Services Dr. Amar  
28 Mehta participated as the persons with full authority for defendants over the matters covered in

1 the emails. *See* Reporter's Transcript of Proceedings (8/4/21 RT), ECF No. 7267, at 3-4. Good  
2 cause appearing, the court by this order memorializes the following next steps discussed at the  
3 August 4, 2021 conference.

4 I. STAFFING

5 The first email concerns staffing tours by defense experts scheduled for fifteen  
6 days in August and September 2021. *See* ECF No. 7261 at 4-5. In the email, counsel for  
7 defendants represent that the tours are taking place consistent with briefing they provided to the  
8 court in Fall 2020 explaining that

9 defendants [had] retained experts to "conduct a comprehensive  
10 study on the CDCR 2009 Mental Health Staffing Plan ("2009  
11 Staffing Plan"), the relationship between the 2009 Staffing Plan to  
12 general requirements of the Coleman Program Guide, and whether  
13 changes in circumstances since development of the 2009 Staffing  
14 Plan, including but not limited to changes in population levels at  
15 various levels of care, technology, the use of telepsychiatry, the use  
of PNPs, etc., warrant modifications to the 2009 Staffing Plan," or  
alternatives for discharging CDCR's staffing obligations. (ECF No.  
6855-1 at 1:23-2:2.) As Defendants noted in the Declaration of  
James Robertson, ECF No. 6855-1, Defendants' staffing experts  
anticipated conducting facility tours and expected such tours to last  
4 weeks. (*Id.* at 4:16-25.)

16 *Id.* at 4. At hearing, Dr. Mehta reported that the experts would be looking at a broad range of  
17 issues that defendants "want to keep alive and keep trying to improve . . . even within psychiatry  
18 but outside of psychiatry as well; psychology staffing, social work staffing, rec therapy and a few  
19 other positions." 8/4/21 RT, ECF No. 7267 at 8. He indicated the information gleaned from the  
20 tours would be used in upcoming settlement conferences "and also to use for [him] to be able to  
21 understand and improve our system as much as [he] can." *Id.* Secretary Allison confirmed the  
22 tours were part of CDCR's ongoing efforts to improve their system. *Id.* at 11. Plaintiffs accept  
23 defendants' representation and plan to attend the tours. *Id.* at 12.

24 Dr. Mehta also noted the retention of the staffing experts predates his tenure with  
25 CDCR, *id.* at 10, and referred to the absence of "full workload analyses" underlying the 2009  
26 Staffing Plan. *Id.* at 9. As the Special Master explained at hearing, prior to development of the  
27 2009 Staffing Plan defendants decided to "scrap" an official workload study, done at great time  
28 and expense to the State, "in favor of what they believed was a more productive, dynamic

1 process, which led to the 2009 staffing plan.” *Id.* at 17-18; *see also* ECF No. 5564 at 31-36  
2 (March 4, 2010 Letter from Special Master Lopes to Debbie Vorous, Esq. and Michael Bien,  
3 Esq.) Additionally, as the court has repeatedly explained, defendants developed the 2009 Staffing  
4 Plan to remedy longstanding constitutional deficiencies in mental health staffing levels and, in so  
5 doing, represented to this court and to the California Legislature that “the staffing levels in the  
6 2009 Staffing Plan were ‘appropriate’ and necessary to meet constitutional standards.” ECF No.  
7 5711 at 15; *see also* *Coleman v. Brown*, 938 F. Supp. 2d 955, 984 (E.D.Cal. 2013) (ECF No.  
8 4539 at 54-55).

9 The Fall 2020 briefing cited in defendants’ email was filed in response to a court  
10 order concerning enforcement of the staffing remedy. *See* ECF No. 7261 at 4 (citing ECF No.  
11 6855-1, filed with ECF No. 6853 in response to July 30, 2020 Order, ECF No. 6794). After  
12 consideration of that briefing, the court authorized

13 defendants to make such minimal modifications to the Staffing Plan  
14 as are required to include a role for psychiatric nurse practitioners  
15 (PNPs) and to reflect the proposals made in the September 8, 2020  
16 letter authored by Melissa Bentz, Esq.,” to “consult with the Special  
17 Master and the Task Force as appropriate to ensure that their  
proposed modifications are the product of consensus of all  
stakeholders to the maximum extent possible” and to file the  
proposed revisions and policy on or before December 11, 2020.  
November 4, 2020 Order, ECF No. 6938, at 8.  
18 ECF No. 7035 at 1. The parties and the Special Master worked diligently on the tasks required by  
19 the November 4, 2020 order, and the court approved the proposed revisions together with a  
20 proposed policy for use of psychiatric nurse practitioners. *Id.* at 2. Systemwide staff vacancy  
21 rates among psychiatrists have recently been below the court ordered ten percent vacancy rate.  
22 *See, e.g.*, ECF Nos. 7253 at 4, 7214 at 5, 7188 at 5. As the court noted at hearing, it is not making  
23 any official finding at this time regarding durable compliance with the staffing remedy; it also has  
24 not revisited the question of enforcement and is not inclined to do so at this time. *See* 8/4/21 RT,  
25 ECF No. 7267, at 7-8. As the court previously noted in its minute order of July 30, 2021, “[i]n  
26 addition, the court has resolved the staffing issues defendants’ email to the Special Master  
27 suggests are unresolved, *see* ECF Nos. 6938, 7305.” ECF No. 7255. To the extent any disputes  
28 over staffing remain, they are very narrow. There are two motions regarding staffing submitted

1 for decision, ECF Nos. 7118, 7250, and any remaining disputes will be the subject of an  
2 upcoming settlement conference. 8/4/21 RT, ECF No. 7267, at 8.

3                   Given the foregoing, the court accepts defendants' representation at hearing that  
4 the staffing tours will be conducted consistent with Dr. Mehta's ongoing responsibilities as  
5 Deputy Director of Mental Health Care to continue to improve CDCR's delivery of mental health  
6 care to class members, to anticipate and solve any issues related to staffing, and to inform  
7 defendants' participation in the court-ordered settlement process. As reviewed above, the court  
8 has resolved the issues that were presented in the briefing cited in defendants' recent email, and  
9 any connection between the tours and those issues is moot. Accordingly, the court confirms its  
10 instruction to the Special Master not to attend the staffing tours so that his energy and resources  
11 can remain focused on the Twenty-Ninth Monitoring Round and participation in all upcoming  
12 settlement conferences.

13           II.        CONTINUOUS QUALITY IMPROVEMENT TOURS

14                   The second email concerns continuous quality improvement (CQI) tours  
15 defendants plan to conduct at eight prison institutions in the spring of 2022 and proposed  
16 revisions to the CQI On Site Audit Guidebook. *See* ECF No. 7261 at 7-10. As required by court  
17 order, during the Special Master's Twenty-Ninth Monitoring Round, which is currently ongoing,  
18 the Special Master is testing and monitoring "the functionality and efficacy" of the list of key  
19 indicators provisionally approved by the court for use in the Continuous Quality Improvement  
20 Tool (CQIT), which will be an integral part of the CQI process. ECF No. 7216 at 14. As the  
21 court has explained, "the 'key indicators' in CQIT 'signify the material provisions of the Program  
22 Guide and the Compendium that must be durably implemented' in order to satisfy the Eighth  
23 Amendment." *Id.* at 4 (citing ECF No. 6846 at 28; ECF No. 6996 at 8). The Special Master is to  
24 report his findings on the CQIT key indicators to the court as part of his Twenty-Ninth  
25 Monitoring Round Report. *Id.* Because the CQIT key indicators are pending final approval, and  
26 because use of CQIT is dependent in the first instance on completion of ongoing data  
27 remediation, the Special Master is not using CQIT itself as part of his monitoring process during  
28 the Twenty-Ninth Round. Instead, he is using the process he has relied on for the past twenty-

1 eight monitoring rounds, *see, e.g.*, ECF No. 7074 at 19 (Twenty-Eighth Round Monitoring Report  
2 describing onsite monitoring visits, paper reviews, and “hybrid Electronic Health Records System  
3 (EHRS) paper reviews”), and, at the same time, evaluating the efficacy of the provisionally  
4 approved list of CQIT indicators as part of an overall transition to defendants’ ultimate  
5 assumption of self-monitoring through the CQI process, *see, e.g.*, ECF No. 7216 at 9 n.5  
6 (quoting ECF No. 5092 at 4-5).

7 At hearing, Dr. Mehta explained the purpose of the proposed tours is to refine and  
8 test at an institutional level the audit process that defendants will follow as the transition to CQI  
9 monitoring is accomplished. 8/4/21 RT, ECF No. 7267 at 13. According to Dr. Mehta, the  
10 proposed tours will not involve or conflict in any way with the court’s process for evaluating and  
11 giving final approval to a complete list of CQIT indicators. *See id.* at 14-15. Dr. Mehta  
12 explained that data remediation and validation is ongoing with staff at CDCR headquarters while  
13 the CQI audit process is conducted by CDCR regional mental health administrators, and he is of  
14 the view that both tasks “can proceed in parallel without creating any conflict.” *Id.* at 14-15.  
15 Secretary Allison explained that defendants decided to set these tours for the spring so that the  
16 Special Master would have time to complete his Twenty-Ninth Monitoring Round and, if he  
17 chose to do so subject to the court’s approval, join the tours. *Id.* at 21.

18 As all stakeholders agree, and the court has repeatedly said, the goal is  
19 development and implementation of a continuous quality improvement process that will  
20 ultimately allow defendants to assume responsibility for monitoring and improvement of their  
21 mental health care delivery system. *See, e.g.*, ECF No. 6996 at 7. CQIT is a tool that includes the  
22 list of key indicators that must be measured during that process to ensure the monitoring is  
23 comprehensive. CDCR’s global mental health data management system will be a major source of  
24 information for using CQIT to monitor institutional delivery of mental health care; consequently  
25 completion of the data remediation and validation now underway is a necessary prerequisite to  
26 the use of CQIT. The other necessary prerequisite is the court’s final approval of the list of CQIT  
27 key indicators. *See, e.g.*, ECF No. 7216.

1                   The court remains focused on bringing this case to a successful conclusion as  
2 efficiently, cost-effectively and collaboratively as reasonably possible. To that end, the court  
3 makes no formal finding about whether defendants can or should retest the CQI audit process  
4 next spring separately from completion of CQIT without wasting time and resources; the court  
5 expects this is something the Special Master working with Secretary Allison, Undersecretary  
6 Toche and Dr. Mehta will be able to determine. At the same time, the court recognizes the  
7 urgency that must attend satisfactory completion of data remediation, as CQIT cannot be  
8 implemented until the data on which it depends can be validated and verified. Accordingly,  
9 recognizing the parties are meeting and conferring on this topic, defendants also will be directed  
10 to work under the guidance of the Special Master to develop preliminary activation schedules for  
11 completion of data remediation and to file those preliminary activation schedules by September  
12 29, 2021. To the extent feasible, defendants shall include with the preliminary activation  
13 schedules a review of all contingencies that at this time preclude development of final activation  
14 schedules for completion of data remediation. Given its importance, the court will place this  
15 matter on the agenda for the October 1, 2021 status conference.

16           III.    GOING FORWARD

17                   At hearing, the court discussed with the parties whether it should impose a  
18 moratorium on further motion practice pending completion of the settlement conference process  
19 now underway. The court has carefully considered the arguments of counsel as well as the  
20 representations of Secretary Allison and Dr. Mehta of their full commitment to the settlement  
21 process and that neither of the matters raised in defendants' emails are in any way a prelude to a  
22 termination motion. The court also has reviewed controlling court orders. At this time, the court  
23 finds that for now the governing orders are adequate to ensure a proper focus by all concerned  
24 going forward.

25           IV.    CONCLUSION

26                   In accordance with the above, IT IS HEREBY ORDERED that defendants are  
27 directed to work under the guidance of the Special Master to develop preliminary activation  
28 schedules for completion of the data remediation currently underway. Defendants shall include

1 with the preliminary activation schedules a review of all contingencies of which they are aware  
2 that preclude at this time development of final activation schedules for completion of data  
3 remediation. The preliminary activation schedules shall be filed by September 29, 2021. The  
4 court will place data remediation on the agenda for the October 1, 2021 status conference.

5 DATED: August 25, 2021.

6   
7 CHIEF UNITED STATES DISTRICT JUDGE  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28