

1 ROB BONTA, State Bar No. 202668
2 Attorney General of California
3 MONICA N. ANDERSON, State Bar No. 182970
Senior Assistant Attorney General
4 DAMON McCCLAIN, State Bar No. 209508
Supervising Deputy Attorney General
ELISE OWENS THORN, State Bar No. 145931
NAMRATA KOTWANI, State Bar No. 308741
5 Deputy Attorneys General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
7 Telephone: (916) 210-7318
Fax: (916) 324-5205
8 E-mail: Elise.Thorn@doj.ca.gov
Attorneys for Defendants

9
10 HANSON BRIDGETT LLP
PAUL B. MELLO, State Bar No. 179755
SAMANTHA D. WOLFF, State Bar No. 240280
LAUREL E. O'CONNOR, State Bar No. 305478
DAVID C. CASARRUBIAS, State Bar No. 321994
1676 N. California Boulevard, Suite 620
Walnut Creek, CA 94596
Telephone: (925) 746-8460
Fax: (925) 746-8490
E-mail: PMello@hansonbridgett.com
Attorneys for Defendants

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12 IN THE UNITED STATES DISTRICT COURT
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14 FOR THE EASTERN DISTRICT OF CALIFORNIA
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16 SACRAMENTO DIVISION

17
18 **RALPH COLEMAN, et al.,**

19 Plaintiffs,

20 v.

21 **GAVIN NEWSOM, et al.,**

22 Defendants.

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

24 **STIPULATION AND ORDER
APPROVING DEFENDANTS' PLAN TO
TREAT MAXIMUM CUSTODY
PATIENTS IN PSYCHIATRIC
INPATIENT PROGRAMS**

25 Judge: The Hon. Kimberly J. Mueller

26 On July 26, 2021, the Court ordered the parties to engage in settlement negotiations with
27 the assistance of a magistrate judge to address disagreements concerning Defendants' use of
Therapeutic Treatment Modules (TTMs) in inpatient settings. (ECF No. 7246.) The parties met
and discussed the California Department of Corrections and Rehabilitation's (CDCR) use of
28 TTMs in inpatient settings and the treatment of patients on Maximum custody ("Max custody")
with Magistrate Judge Kendall Newman and the *Coleman* Special Master on September 15,
October 5, and November 1, 2021. Based on the settlement negotiations, the parties agree to the

1 terms set forth below that provide for Defendants' use of TTMs¹ to deliver mental health care to
2 *Coleman* class members in Psychiatric Inpatient Programs (PIPs).

3 **I. DEFENDANTS' PLAN**

4 1. Defendants have developed and plan to implement a memorandum titled *Maximum*
5 *Custody Reduction Reviews for Psychiatric Inpatient Program Participants* to provide direction
6 regarding the preference for and ability to remove the designation of Max custody from *Coleman*
7 class members in PIPs when appropriate. A copy of the memorandum is attached as Exhibit A to
8 this stipulation. Defendants agree to implement the process set forth in the *Maximum Custody*
9 *Reduction Reviews for Psychiatric Inpatient Program Participants* memorandum based on the
10 preliminary activation schedule and plan provided to Plaintiffs and the terms of the stipulation.

11 2. Defendants will take steps to finalize the *Maximum Custody Reduction Reviews for*
12 *Psychiatric Inpatient Program Participants* memorandum, which may include appropriate notice
13 to any labor union effected, upon the Court's approval of this stipulation. Defendants will take all
14 steps required to implement the memorandum as quickly as possible, and no later than 90 days
15 following the Court's approval of this stipulation.

16 3. Defendants will develop training for custody and mental health staff on the Max
17 custody review process that will be provided to Plaintiffs' counsel for review within 90 days of
18 the Court's approval of this stipulation.

19 4. Defendants will install TTMs for use under this stipulation at the California Health
20 Care Facility and other PIPs as necessary. TTMs will be limited to those areas where Max
21 custody patients program. Defendants will provide Plaintiffs and the Special Master with
22 advance notice of installation of TTMs at all PIPs moving forward, including the basis for the
23 proposed installation as well as the proposed number and placement of the TTMs. Plaintiffs will
24 have 30 days to respond regarding the proposed number and placement of the TTMs. The parties
25 will meet and confer during that time period as necessary.

26 _____
27 1 The parties agree all TTMs envisioned by this agreement will conform to the
28 specifications previously set forth at ECF Nos. 4714-12 (Jan. 12, 2007 Memorandum from Office
of Special Master re Therapeutic Treatment Module Specifications), and 7333-2 at 4
(Compendium Reference to May 3, 2012, memo regarding Wheelchair Accessible Therapeutic
Treatment Module Specifications). 2

1 5. Defendants will take steps necessary to revise the Electronic Health Record System to
2 require that the IDTT assess each Max custody patient for recommendation to the ICC for a Max
3 custody review, no later than November 30, 2021.

4 6. Defendants will take all steps necessary to ensure that treatment in the PIPs targets
5 behaviors that result in patients being placed or continued on Max custody if mental health
6 symptoms may have contributed to the behavior(s), and that such treatment is addressed toward
7 the goal of helping patients get off of Max custody when appropriate. Such steps include, but are
8 not limited to, continuing the already-established PBST program and implementing the STEP
9 program.

10 7. Defendants will train staff to respond to behavior in the PIPs without using RVRs,
11 and through alternative responses that do not result in patients being placed on Max custody while
12 in the PIPs, when appropriate.

13 8. Defendants will submit a report to the Special Master and Plaintiffs on the status of
14 implementation of the *Maximum Custody Reduction Reviews for Psychiatric Inpatient Program*
15 *Participants* memorandum and on the designation of *Coleman* class members in PIPs on Max
16 custody within nine months from the Court's approval of this stipulation.

17 9. For two years following the initial implementation report, Defendants will submit to
18 the Special Master and Plaintiffs a quarterly report on the status of the implementation of the
19 *Maximum Custody Reduction Reviews for Psychiatric Inpatient Program Participants*
20 memorandum, including the status of *Coleman* class members in PIPs who are on Max custody.
21 Defendants' quarterly production will include the following information:

22 a. A roster of patients the MHCT recommended for removal from Max custody
23 during the reporting period;

24 b. A report with information regarding the bi-weekly MHCT and Deputy Director
25 reviews and subsequent ICCs for the reporting period, including comments as to
26 why a patient was retained or placed on Max custody. The parties will meet and
27 confer regarding the contents and format of this report; and

c. ICC determinations, including the classification chrono, rules violation report packet(s), and supporting documents, excluding confidential memoranda, for a random sample of the patients retained or placed on Max custody during the reporting period. The parties will work together to develop a random sampling methodology for this production.

6 10. Plaintiffs' counsel shall be permitted to observe a reasonable number of Max custody
7 review ICCs for a two-year period.

8 11. At the end of the two-year period, the parties will meet and confer about the
9 frequency and scope of the obligations outlined in paragraphs 9 and 10 above.

II. DISPUTE RESOLUTION PROCESS FOR ENFORCEMENT OF STIPULATION

11 12. If Plaintiffs believe that Defendants are violating the terms of this Stipulation,
12 Plaintiffs' counsel shall promptly notify Defendants setting forth the nature of the alleged
13 violations. The parties shall engage in a reasonable period of negotiations facilitated by
14 Magistrate Judge Kendall Newman or a mutually agreed upon neutral to resolve the allegations.
15 Allegations that are not resolved after a reasonable period of negotiation may be presented to the
16 *Coleman* court for resolution.

17 || III. NATURE OF THIS STIPULATION

18 13. Defendants contend that the use of TTMs to deliver mental health care to Max
19 custody patients does not violate the Eighth Amendment, and that nothing in this agreement
20 should be construed as an admission of such. Defendants further contend that the plan set forth in
21 Part II above, including the *Maximum Custody Reduction Reviews for Psychiatric Inpatient*
22 *Program Participants* memorandum, is not necessary to remedy any Eighth Amendment
23 violations, and accordingly, is not part of the Eighth Amendment remedy in this case.

24 14. Plaintiffs maintain their objection that the use of TTMs in any treatment setting,
25 including Defendants' PIPs, is violative of the Eighth Amendment. To the extent that Defendants
26 utilize TTMs in the PIPs, Plaintiffs further maintain that Defendants' plan set forth in Part II
27 above, including the *Maximum Custody Reduction Reviews for Psychiatric Inpatient Program*
28 *Participants* memorandum, is a necessary part of the Eighth Amendment remedy in this case.

1 15. The parties agree that Defendants' plan shall not be included in the MHSDS Program
2 Guide or Compendium. This stipulation sets forth the entirety of the remedy related to the issues
3 set forth above.

4 **IT IS SO STIPULATED.**

5 DATED: November 19, 2021

6 ROB BONTA
7 Attorney General of California
8 Damon McClain
9 Supervising Deputy Attorney General

10 By: s/ Elise Owens Thorn

11 Elise Owens Thorn
12 Deputy Attorney General
13 Attorneys for Defendants

14 DATED: November 19, 2021

15 HANSON BRIDGETT LLP

16 By: /s/ Samantha Wolff

17 PAUL B. MELLO
18 SAMANTHA D. WOLFF
19 Attorneys for Defendants

20 DATED: November 19, 2021

21 ROSEN BIEN GALVAN & GRUNFELD LLP

22 By: /s/ Lisa Ells

23 LISA ELLS
24 Attorneys for Plaintiffs

1 After review of the parties' November 19, 2021 Response (ECF No. 7380) to this
2 court's November 8, 2021 Order to Show Cause (ECF No. 7368), the foregoing stipulation of the
3 parties, and the *Maximum Custody Reduction Reviews for Psychiatric Inpatient Program*
4 *Participants* memorandum filed November 4, 2021 at ECF No. 7367, and good cause appearing,
5 the court APPROVES paragraphs 1 through 14 of the foregoing stipulation. The court
6 CONDITIONALLY APPROVES Paragraph 15 of the stipulation pending final resolution of what
7 updating process the court will adopt for the Program Guide in the future.

8 **IT IS SO ORDERED.**

9 Dated: December 9, 2021.

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12 CHIEF UNITED STATES DISTRICT JUDGE

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