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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 RALPH COLEMAN, et al.,

11 Plaintiffs,

No. CIV S-90-0520 LKK JFM P

12 vs.

13 ARNOLD SCHWARZENEGGER,  
14 et al.,

15 Defendants.

ORDER

16 On September 24, 2007, the special master filed a report and recommendations on  
17 defendants' August 2007 supplemental bed plan (hereafter September 24, 2007 Report and  
18 Recommendations). This report and its recommendations focus on defendants' "long-range  
19 plans for meeting future bed needs in all of its residential, crisis and inpatient programs through  
20 Fiscal Year 2011/12." September 24, 2007 Report and Recommendations, at 3. On September  
21 26, 2007, plaintiffs filed a response to the report and recommendations. Defendants filed their  
22 response on October 9, 2007.

23 The special master recommends that the court approved the revised August 2007  
24 bed plan, and that defendants be required to submit additional planning documents within 120  
25 days. These include:

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- Timeframes for meeting and procuring for all California Department of Corrections and Rehabilitation (CDCR)-operated inpatient programs applicable State licensure and accreditation by the Joint Commission on Accreditation of Healthcare Organizations;
- A plan for the recruitment and compensation of hospital administrators to develop and run CDCR's overall inpatient treatment program and the specific institutional inpatient programs in its consolidated care centers;
- Preparation of a memorandum of understanding on California Department of Mental Health's (DMH) mentoring and direct service obligations under the revised plan for integration in an inter-agency agreement;
- A plan identifying anticipated clinical and custody staffing needs and a program for providing the personnel required to recruit, vett, hire and retain adequate staffing;
- A development proposal for adequate mental health treatment and counseling space at California Medical Facility and Salinas Valley State Prison; and
- An analysis justifying the reduction and/or elimination of mental health crisis beds in the revised August 2007 plan in the 29 CDCR institutions that are not scheduled to deliver consolidated care.

See September 24, 2007 Report and Recommendations, at 16.

In their response, plaintiffs raise two issues not squarely addressed in the September 24, 2007 Report and Recommendations, and they seek modification of the timeframe for one of the recommended plans. Noting that the plan apparently leaves a shortage of female enhanced outpatient (EOP) and enhanced outpatient-administrative segregation unit (EOP-ASU) beds, and that defendants have represented only that these shortages will be addressed in future planning, plaintiffs seek an order requiring defendants to provide a long-range bed plan that meets these needs. Good cause appearing, the special master will be directed to report to the court in his twentieth round monitoring report on the status of defendants' efforts to provide sufficient EOP and EOP-ASU beds for female class members.

Plaintiffs also seek an order from the court "mandating ongoing and close supervision of the CCC construction plans and programmatic design plans as they are developed" to ensure compliance with the Americans' with Disabilities Act (ADA) and "other

1 applicable laws.” Plaintiffs’ Response, at 2. It is of course true that defendants must comply  
2 with all federal laws that apply to the operation of their prison system. The question of whether  
3 this court can enforce compliance with the ADA and other applicable provisions of federal law  
4 in the context of the development of a remedy in this § 1983 action is complex and not  
5 appropriately resolved as presently tendered by plaintiffs. This request will be overruled without  
6 prejudice.

Plaintiffs’ third request is that the time frame for submission of a  
7 development proposal for adequate mental health treatment and counseling space at California  
8 Medical Facility (CMF) and Salinas Valley State Prison (SVSP) be expedited so that these  
9 spaces are completed by January 31, 2008. In their response to the September 24, 2007 Report  
10 and Recommendations, defendants assert that these treatment and counseling spaces were not  
11 part of the August 17, 2007 bed plan, but that they will prepare the recommended plans.  
12 Defendants intend to submit a plan for SVSP within 120 days, and they ask that the proposal for  
13 CMF be due within 150 days.

14 The court is mindful of the urgency of the matters at bar. It is also important that  
15 the court set deadlines that can in fact be met and, if necessary, enforced. For that reason,  
16 plaintiffs’ request for an order requiring defendants to complete these treatment spaces by  
17 January 31, 2008, which is just over 100 days from now, will be denied. The court will grant  
18 defendants the additional time they request to submit the plan for CMF. The court anticipates  
19 and expects that defendants will take all steps necessary to timely submit adequate plans to the  
20 special master.

21 Defendants raise several objections to the September 24, 2007 Report and  
22 Recommendations. Most of defendants’ objections are to the 120 day time frame for submission  
23 of plans recommended by the special master. These objections are grounded in the fact that they  
24 have not finalized the timetable for construction of the consolidated care centers at the heart of  
25 their long range bed plan. The special master notes that “defendants’ revised plan cites the  
26 expectation or hope that coordination with the Plata receiver’s construction plans may expedite

1 all or portions of the planned construction of the consolidated care centers.” September 24, 2007  
2 Report and Recommendations, at 12. The court recognizes the uncertainties that attend  
3 defendants’ ongoing efforts to coordinate construction of the consolidated care centers with  
4 construction plans in the Plata case, and assumes that the absence of a finalized timetable for  
5 construction of the consolidated care centers is due in large part to these uncertainties. To that  
6 end, for purposes of developing the plans recommended by the special master defendants will be  
7 directed to assume they will be proceeding with construction separately from the construction in  
8 Plata. With one exception, they will be given a period of six months in which to submit the  
9 plans for which they seek additional time.

10 With respect to the special master’s first recommendation, defendants raise two  
11 additional objections. First, they seek a period of thirty days in which to “research and  
12 determine” whether the Joint Commission on Accreditation of Healthcare Organizations  
13 (JCAHO) provides accreditation for intermediate care beds in a non-hospital prison setting.  
14 Defendants also object to the recommendation that they seek JCAHO accreditation for the  
15 intermediate care programs to be operated by the CDCR on the ground that two such programs  
16 operated by DMH at CMF and SVSP are not JCAHO accredited and defendants intend to model  
17 the CDCR-run programs “upon the DMH model.” Defendants’ Response, at 2.

18 Good cause appearing, defendants will be given the requested period of thirty  
19 days in which to complete their research concerning JCAHO accreditation. Defendants’ second  
20 objection is overruled.

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

22 1. The special master’s September 24, 2007 report is accepted in full and his  
23 recommendations adopted as modified herein.

24 2. Defendants’ August 2007 supplemental bed plan is approved.

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1           3. The special master shall report to the court in his twentieth round monitoring  
2 report on the status of defendants' efforts to meet fully the projected needs for female enhanced  
3 outpatient and enhanced outpatient-administrative segregation unit beds.

4           4. Plaintiffs' request for an order mandating ongoing and close supervision of the  
5 consolidated care center construction plans and programmatic design plans for compliance with  
6 the Americans with Disabilities Act and other federal laws is denied without prejudice.

7           5. Plaintiffs' request for an expedited time frame for planning for and completion  
8 of adequate mental health treatment and counseling space at California Medical Facility and  
9 Salinas Valley State Prison is denied.

10           6. Defendants are granted a period of thirty days from the date of this order to  
11 determine whether the Joint Commission on Accreditation of Healthcare Organizations provides  
12 accreditation for intermediate care beds in a non-hospital prison setting. Assuming that it does,  
13 within six months thereafter defendants shall submit to the special master a plan with timeframes  
14 for meeting and procuring for all California Department of Corrections and Rehabilitation-  
15 operated inpatient programs applicable State licensure and accreditation by the Joint  
16 Commission on Accreditation of Healthcare Organizations.

17           7. Within six months from the date of this order, defendants shall submit to the  
18 special master the following plans:


- 19           • A plan for the recruitment and compensation of hospital administrators to  
20 develop and run California Department of Corrections and  
21 Rehabilitation's overall inpatient treatment program and the specific  
institutional inpatient programs in its consolidated care centers;
- 22           • Preparation of a memorandum of understanding on California Department  
23 of Mental Health's mentoring and direct service obligations under the  
revised plan for integration in an inter-agency agreement;
- 24           • A plan identifying anticipated clinical and custody staffing needs and a  
25 program for providing the personnel required to recruit, vet, hire and  
retain adequate staffing; and
- 26           • An analysis justifying the reduction and/or elimination of mental health  
crisis beds in the revised August 2007 plan in the 29 California

1 Department of Corrections and Rehabilitation institutions that are not  
2 scheduled to deliver consolidated care.

3 8. Within 120 days from the date of this order defendants shall submit to the  
4 special master a development proposal for adequate mental health treatment and counseling  
5 space at Salinas Valley State Prison.

6 9. Within 150 days from the date of this order defendants shall submit to the  
7 special master a development proposal for adequate mental health treatment and counseling  
8 space at California Medical Facility.

9 DATED: October 17, 2007.

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12 LAWRENCE K. KARLTON  
13 SENIOR JUDGE  
14 UNITED STATES DISTRICT COURT  
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