

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

RALPH COLEMAN, et al.,

Plaintiffs, No. 2:90-cv-0520 LKK JFM P

vs.

EDMUND G. BROWN, JR., et al.,

Defendants. ORDER

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On July 2, 2012, the Special Master filed his Twenty-Fourth Round Monitoring Report. The report contains one recommendation, as follows:

[T]he special master recommends that the *Coleman* court enter an order requiring defendants to review and assess their existing quality assurance process, and to develop an improved quality improvement process by which it can address issues with the quality of the care that is delivered, as described above. The quality improvement process should be developed from the standpoint of it being the beginning of a transition by CDCR into self-monitoring by its own DCHCS. It should include, but not be limited to, the development of a process for improved document production for institutional paper reviews, so that the provided information is clear, consistent, responsive to the special master's document request, and useful for the assessment of institutional levels of compliance. The defendants' review and assessment of their existing quality assurance process, and the development of an improved quality improvement process, should be carried out under the guidance of the special master and his staff, with

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1 participation and input of the *Coleman* plaintiffs, during the six-  
2 month period following the entry of such order.

3 Twenty-Fourth Round Monitoring Report, filed July 2, 2012, at 66-67. On July 12, 2012,  
4 defendants filed objections to the recommendation. Plaintiffs filed a response to defendants'  
5 objections on July 20, 2012, and on August 3, 2012, defendants filed a reply to plaintiffs'  
6 response.

7 Defendants raise three objections to the Special Master's recommendation. First,  
8 they contend their "current quality assurance process is constitutionally adequate, and an order  
9 directing Defendants to revise a presumptively constitutional process is not needed."  
10 Defendants' Objections, filed July 12, 2012, at 1. Second, they contend that the order "is  
11 unnecessary and could be counterproductive" because of steps the Receiver in Plata v. Brown,  
12 No. 01-1351 TEH (N.D.Cal.) is taking to implement a "comprehensive remodeling and revision  
13 of CDCR's health care quality assurance process, of which mental health's quality assurance  
14 process is a subset." Id. at 2. Third, defendants state their willingness to work with the special  
15 master to "improve the quality assurance process without a court order." Id.

16 Pursuant to paragraph C of this court's December 11, 1995 order of reference,  
17 which outlines the duties and powers of the Special Master in this action, this court will not  
18 entertain any objection to the Special Master's report "unless an identical objection was  
19 previously submitted to the special master in the form of a specific written objection . . ."  
20 Order of Reference, filed December 11, 1995, at 8. With their response to defendants'  
21 objections, plaintiffs have filed a copy of the written "comments and objections" submitted by  
22 defendants to the Special Master after the parties received his draft Twenty-Fourth Round  
23 Monitoring Report. Ex. A to Declaration of Laura Boysen-Aragon, filed July 20, 2012, at 1.  
24 The "comments and objections" contain no objection to issuance of the recommended order.  
25 Instead, defendants offered comments, as follows:

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1                   **I. Recommendation Concerning the Division of Correctional**  
 2                   **Health Care Services' Quality Assurance Process.**

3                   The Report recommends that the Court issue an order  
 4                   instructing Defendants to “review and assess their existing quality  
 5                   assurance process, and to develop an improved quality  
 6                   improvement process by which it can develop and address issue  
 7                   within the quality of care that is delivered. . .” and that this process  
 8                   should be implemented under the guidance of the Special Master  
 9                   and with the participation of the *Coleman* plaintiffs over a period  
 10                   of six months. (Report pp. 62-63.) While Defendants believe that  
 11                   their current quality assurance process is constitutional, they are  
 12                   willing to evaluate and improve their system for providing care in  
 13                   cooperation with the Special Master.

14                   Currently, the Receiver in *Plata v. Brown* is implementing a  
 15                   comprehensive remodeling and revision of CDCR’s health care  
 16                   quality assurance process, of which mental health’s quality  
 17                   assurance process is a subset. These revisions reflect the  
 18                   Receiver’s and the State’s goal of integrating all three health care  
 19                   disciplines—medical, mental health, and dental—under one  
 20                   administrative system. In his Nineteenth Tri-Annual Report, the  
 21                   Receiver states that his process is in the “final” stage of  
 22                   development. (Nineteenth Triannual Report, Dkt. 4145-1 p.16.)  
 23                   Defendants therefore invite the Special Master to review the  
 24                   revised quality assurance process in coordination with the CDCR  
 25                   and the Receiver. This coordination will allow the quality  
 26                   assurance process to be evaluated without duplicating planned  
 revisions or creating conflicted systems.

16                   *Id.* at 1-2. In a footnote, defendants added that they “do not waive any legal rights or limitations  
 17                   under the Prison Litigation Reform Act by inviting the Special Master to review and assess their  
 18                   quality assurance process in coordination with the *Plata* Receiver.” *Id.* at 2 n.1.

19                   Nothing in the foregoing constitutes an objection to issuance of the order  
 20                   recommended by the Special Master.<sup>1</sup> Indeed, the comments suggest acquiescence in the  
 21                   recommended order. The principal purpose of the requirement that the parties tender an  
 22                   identical objection to the special master prior to raising it with the court is to give the Special  
 23                   Master an opportunity to address all objections before a final report is filed. Considerations of

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24                   1The “comments and objections” tendered to the Special Master contains three sections.  
 25                   Section I, which is set forth in its entirety above, nowhere contains any reference to an objection.  
 26                   In contrast, Section II is identified as “Overall Objections to Report” and Section III is identified  
 as “Comments and Objections Regarding Specific Institutions and Inmates.” *Id.* at 2.

1 both judicial economy and fairness inform this requirement. The court is aided immeasurably by  
2 the Special Master's monitoring reports and by his consideration of all objections tendered to his  
3 draft reports and recommendations. Defendants did not raise with the Special Master their  
4 objection that the recommended order should not be issued. For that reason, their objections to  
5 its issuance will not be entertained by this court.<sup>2</sup>

6 The Special Master's Twenty-Fourth Round Monitoring Report and the findings  
7 and recommendation contained therein will be adopted in full. At this late stage in this case, the  
8 court wants to emphasize in particular its complete concurrence with the Special Master's  
9 finding that “[a]n important goal of the remedial phase of this case is, . . . , for CDCR itself to  
10 assume the mantle of ultimate responsibility for diagnosing of its own problems, i.e. conduct its  
11 own ‘qualitative analysis,’ and create a quality improvement process that it can use to achieve  
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13 <sup>2</sup>Defendants' "Overall Objections" to the draft Twenty-Fourth Round Monitoring Report  
14 were as follows: "Defendants renew all past objections to the scope, length, and timeliness of  
15 the monitoring report. Defendants specifically object to: (1) areas of monitoring and reporting  
16 that overlap with the *Plata* Receiver's oversight of staffing and hiring issues, medication  
17 management, medical record-keeping, and use of information technology, to the extent that the  
18 Special Master's monitoring is duplicative; and (2) the lack of clear benchmarks and qualitative  
19 analysis designed to assist Defendants in achieving program guide requirements. Defendants  
20 also object to the Report's criticism of the quality of document production of the institutions on  
21 paper review as there was no substantive reporting of those institutions." Ex. A to Boysen-  
22 Aragon Declaration of Laura Boysen-Aragon, at 1. The Special Master responded to these  
23 objections in detail. See Twenty-Fourth Round Monitoring Report, at 15-19 (addressing  
24 defendants' objection to the "scope" of the monitoring report in light of the orders that govern  
25 the Special Master's duties in this action and in light of ongoing coordination efforts with, in  
26 particular, the receiver in *Plata v. Brown*, No. 01-1351 TEH (N.D.Cal.)); 22-24 (addressing  
defendants' objections to the criticism of the quality of document production of institutions on  
paper review and alleged "lack of clear benchmarks and qualitative analysis designed to assist  
defendants in achieving program guide requirements"); 24-27 (addressing defendants' objection  
to the length of the monitoring report); and 28-30 (addressing defendants' objection to the  
timeliness of the monitoring report). Defendants have not renewed any of these objections  
before this court in response to the Twenty-Fourth Round Monitoring Report.

The Special Master's time is a resource that going forward need not be spent on  
objections that have been raised and, as evidenced by defendants' decision not to tender them to  
this court, he has resolved. While the parties are required to raise before the Special Master any  
objection they intend to raise here, the Special Master is not required to respond to any  
objections that are frivolous or repetitive of objections that were previously resolved or  
withdrawn.

1 and maintain compliance, and *move on to eventual removal from federal court oversight.*”

2 Twenty-Fourth Round Monitoring Report at 65 (emphasis added).

3 The Special Master’s role in guiding the remedial process has been invaluable.  
 4 Most recently, that guidance, together with the cooperation of the parties and diligent efforts by  
 5 defendants, has led to significant breakthroughs in what previously seemed intractable problems  
 6 with access to inpatient mental health care. The court expects and anticipates the same level of  
 7 focus and diligence to be brought to the tasks that remain in the remedial phase of this litigation.<sup>3</sup>

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

9 1. The Special Master’s Twenty-Fourth Round Monitoring Report and the  
 10 findings and recommendation contained therein are adopted in full; and

11 2. Defendants shall review and assess their existing quality assurance process,  
 12 and shall develop an improved quality improvement process by which they can address issues  
 13 with the quality of the care that is delivered, as described in the Special Master’s Twenty-Fourth  
 14 Round Monitoring Report. The quality improvement process shall be developed from the  
 15 standpoint of it being the beginning of a transition by CDCR into self-monitoring by its own  
 16 DCHCS. It shall include, but not be limited to, the development of a process for improved  
 17 document production for institutional paper reviews, so that the provided information is clear,

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19 <sup>3</sup>In his Twenty-Second and Twenty-Third Round Monitoring Reports, the Special Master  
 20 identified “seven general goals” for the defendants. Defendants have made substantial progress  
 21 on one of those goals with the recent elimination of the inpatient wait list. The first goal  
 22 identified in each report pertains to suicide prevention. See Twenty-Third Round Monitoring  
 23 Report, filed December 1, 2011, at 74; Twenty-Second Round Monitoring Report, filed March 9,  
 24 2011, at 461-2. There were 346 suicides among CDCR inmates in the years from 2000 through  
 25 2010. See Report on Suicides Completed in the California Department of Corrections and  
 26 Rehabilitation in Calendar Year 2010, filed November 9, 2011, at 5. The Special Master has  
 informed the court that there were 33 suicides in 2011 and there have been 24 suicides to date in  
 2012. The total of 403 suicides in that period represents an average of approximately 1 suicide  
 every 11.5 days. The other goals identified by the Special Master include review of and  
 compliance with orders and standards applicable to administrative segregation, completion of  
 construction of mental health beds and treatment space, full implementation of defendants’  
 mental health staffing plan, and refinement and full implementation of MHTS.net. Meeting each  
 of these goals is critically important.

1 consistent, responsive to the Special Master's document request, and useful for the assessment of  
2 institutional levels of compliance. The defendants' review and assessment of their existing  
3 quality assurance process, and the development of an improved quality improvement process,  
4 shall be carried out under the guidance of the Special Master and his staff, with participation and  
5 input of the *Coleman* plaintiffs, during the six-month period following the entry of this order.

6 DATED: August 30, 2012.

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9 LAWRENCE K. KARLTON  
10 SENIOR JUDGE  
11 UNITED STATES DISTRICT COURT  
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