

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,
Plaintiffs,

v.

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

No. CIV. S-90-520 LKK/DAD (PC)

ORDER

On January 21, 2014, defendants filed a motion regarding their long-range mental health bed plan (ECF No. 4984). On February 5, 2014, plaintiffs filed a response to defendants' motion and a request for further orders (ECF No. 5052), and on February 25, 2014, defendants filed a corrected reply (ECF No. 5090-1). Pursuant to court order, the matter came on for status conference on March 10, 2014. Michael Bien, Esq., appeared as counsel for plaintiffs. Patrick McKinney, Deputy Attorney General, appeared as counsel for defendants.

In their motion defendants (1) update the court on the status of all court-approved projects in the long-range bed plan; (2) "address previously approved changes to projects at

1 California State Prison-Lancaster and Central California Women's
2 Facility," Defs. Mot. Re: Long-Range Bed Plan, filed January 21,
3 2014 (ECF No. 4984) at 3¹; and (3) move for relief from the
4 requirement of the court's January 4, 2010 order (ECF No. 3761)
5 that the mental health beds in the California Health Care
6 Facility in Stockton (CHCF) be fully activated by the end of
7 2013. Id. Defendants assert no further court orders are
8 required for delays reported in the projects at California State
9 Prison-Lancaster (LAC) or Central California Women's Facility
10 (CCWF) but if orders are required they request approval of the
11 current activation dates for those two projects. Id. With
12 respect to CHCF, defendants represent that difficulties with
13 recruitment and retention of staff psychiatrists are preventing
14 the opening of five remaining mental health units.²

15 In part relevant to defendants' motion, plaintiffs oppose
16 defendants' request for what plaintiffs characterize as an "open-
17 ended" delay in full activation of CHCF, and they contend
18 defendants are in violation of, and require relief from, court
19 orders with respect to the projects at LAC and CCWF. Plaintiffs
20 also seek additional relief with respect to bed-planning. That
21 request is addressed infra.

22 The three projects at issue are part of defendants' long-
23 range bed plan (Plan). The Plan was filed pursuant to this

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25 ¹ All citations to page numbers in documents filed in this action
are to the ECF page number at the top of the document.

26 ² At the status conference, counsel for defendants represented
27 that two more mental health units will open at CHCF on March 24,
28 2014 and defendants expect to activate all remaining units
possibly by this summer.

1 court's September 24, 2009 order (ECF No. 3686). In relevant
2 part, that order required defendants to file "a detailed long-
3 range plan, including activation schedules" which was to include,
4 inter alia, "a schedule with a date certain for completion of
5 each project included in the long-range plan." Order filed
6 September 24, 2009 (ECF No. 3686) at 3. The order specifically
7 provided that "[t]he timetables for completion of each step
8 described in the plan shall be developed in such a way that all
9 projects in the long-range plan will be fully staffed and
10 activated by the 2013 target date defendants have established."
11 Id.

12 Defendants filed the Plan on November 6, 2009 (ECF No.
13 3724). The LAC project was included in the Plan as a project
14 previously ordered by this court. See Defs. Long-Range Plan,
15 filed November 6, 2009 (ECF No. 3724) at 9. It had a projected
16 completion date of September 12, 2012. Id. at Ex. 6. It was
17 approved in an order filed January 4, 2010 order (ECF No. 3761).

18 The CCWF project was added pursuant to provisions of the
19 court's January 4, 2010 order (ECF No. 3761) requiring defendants
20 to file a detailed plan to meet the long-range bed needs of
21 female EOP (Enhanced Outpatient) inmates. See Order filed
22 January 4, 2010 (ECF No. 3761) at 4; Defs. Resp. to January 4,
23 2010 Order (ECF No. 3805). As initially presented to the court,
24 the CCWF project included 70 new EOP-GP (general population) beds
25 and construction of a new building to provide treatment and
26 office space for the projected 124 female EOP-GP inmates. Defs.
27 Resp. to January 4, 2010 Order (ECF No. 3805) at 1. The
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1 activation schedule for this project had a completion date of
2 December 31, 2013. Id.

3 On January 11, 2012, defendants filed notice of their
4 intention to seek modification of the Plan based on reductions in
5 California's prison population. Defs. Update, filed January 11,
6 2012 (ECF No. 4144). The update was accompanied by, inter alia,
7 a revised activation schedule for the CCWF project. Id. at Ex.
8 3. The revised schedule still indicated completion of the
9 project by December 31, 2013. Id.

10 On June 12, 2012, defendants filed a request to revise the
11 Plan due to "significant population reductions occurring under
12 the newly enacted prison realignment legislation." Defs. Req.
13 Re: Revised Long-Range Bed Plan, filed June 12, 2012 (ECF No.
14 4196) at 4. In relevant part, defendants requested modification
15 of the LAC project to eliminate the 150 EOP-GP beds and to
16 rescope the treatment and office space facility to treat 100 EOP-
17 ASU (Administrative Segregation Unit) inmates. Id. at 12.
18 Defendants requested modification of the CCWF project to
19 eliminate the 70 planned EOP-GP beds and to rescope the treatment
20 and office space project to provide space for the existing 54
21 EOP-GP beds. Id. at 12-13.

22 By order filed June 15, 2012, defendants' request was
23 granted in relevant part. Order filed June 15, 2012 (ECF No.
24 4199) at 4, 5. Specifically, the June 15, 2012 order "modified"
25 prior "orders concerning construction and conversion in
26 Defendants' existing bed plan" to allow implementation of
27 defendants' "revised mental health bed plan." Id. at 3.

1 These modifications included (1) modification of the January
2 4, 2010 order (ECF No. 3761) to revise the CCWF project "to
3 construct treatment and office space and convert existing housing
4 unit beds to 70 EOP-GP beds with a project to construct treatment
5 and office space for the existing 54 EOP-GP beds only"; and (2)
6 modification of an October 18, 2007 order (ECF No. 2461) and the
7 January 4, 2010 order (ECF No. 3761) to revise the LAC project
8 "to construct treatment and office space and convert housing for
9 150 EOP-GP inmates with a project to construct treatment and
10 office space for 100 EOP-ASU inmates only." Id. at 4.

11 Since at least mid-2009, defendants have been required to
12 report to the Special Master the status of all court-ordered
13 construction projects, including whether the projects remain on
14 schedule or are delayed. See Orders filed June 18, 2009 (ECF No.
15 3613) at 2; Order filed September 24, 2009 (ECF No. 3686) at 3-4;
16 Order filed January 4, 2010 (ECF No. 3761) at 5. The January 4,
17 2010 order modified prior orders to require notice of schedule
18 changes only where completion of a project would be delayed by
19 more than thirty days. Order filed January 4, 2010 (ECF No.
20 3761) at 5.

21 Nothing in the notice requirements, however, altered the
22 fundamental requirement, set in the court's September 24, 2009
23 order, that all constructions projects be completed by December
24 31, 2013.³ Thus, defendants were required to timely seek leave
25 of court to extend the deadline for completion of any project

26 ³ In the June 15, 2012 order, the court approved an extension of
27 the Dewitt project to permit full occupancy of that project by
28 May 31, 2014. Order filed June 15, 2012 (ECF No. 4199) at 4.

1 that would not be completed by the end of 2013; notice to the
2 court and the Special Master of delays was and is insufficient.⁴
3 The court will extend the deadline for full activation of the LAC
4 project to March 31, 2014, and the deadline for full activation
5 of the CCWF project to June 2015. Defendants will be directed to
6 forthwith file a new activation schedule for the CCWF project.
7 The notice and reporting provisions of this court's January 4,
8 2010 order (ECF No. 3761) shall apply in full force to this
9 project, including but not limited to monthly reports as to
10 whether the project has been or can be accelerated. Defendants
11 will be ordered to complete the project not later than June 2015,
12 and to take all feasible steps to accelerate that date. In
13 addition, defendants will be required to seek leave of court to
14 extend by more than thirty days any interim date set in the new
15 activation schedule for this project.

16 The issues with respect to CHCF are different. Construction
17 of that facility is complete. The delay in full activation of
18 the mental health program at CHCF centers, according to
19 defendants, on their inability despite diligent efforts to fully
20 staff that program. The court agrees with defendants' judgment
21 that they should not house seriously mentally ill inmates in
22 hospital units unless those units are sufficiently and adequately
23 staffed. The court will require defendants to provide monthly
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26 ⁴ In fact, defendants' prior request for modification suggests
27 they understood that leave of court was required for material
28 modifications to their bed plan, including extensions of time for
projects that would not be completed by the December 31, 2013
deadline.

1 updates to this court and to the Special Master until staffing is
2 complete.⁵

3 At the status conference, defendants estimated that all
4 mental health units at CHCF would be activated in a matter of
5 months. Plaintiffs raise two concerns. First, as noted in
6 plaintiffs' response to defendants' motion, on January 27, 2014,
7 the Plata Receiver closed admissions to CHCF pending resolution
8 of "major deficiencies" at the facility. Pls. Resp. (ECF No.
9 5052) at 6. At the status conference, defendants agreed to file
10 a written report to this court on the status of resolution of
11 those deficiencies. That report shall be filed within fifteen
12 days from the date of this order. Second, at the status
13 conference plaintiffs suggested that a review of whether the
14 current salary schedule for psychiatrists is competitive both
15 within California and nationally is warranted, and defendants
16 have agreed to conduct such a review. Defendants will be
17 directed to include the results of said review in the first
18 monthly status report to be filed pursuant to this order.⁶

19 As noted above, plaintiffs request a number of court orders
20 in their opposition to defendants' motion. In substantial part,
21 plaintiffs' requests center on their contention that (1)

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23 ⁵ As part of his duties, the Special Master is monitoring all
24 inpatient mental health programs for CDCR inmates, including the
25 programs at CHCF. Nothing in the reporting requirement imposed
26 by this order alters or in any way affects the duty of the
27 Special Master to monitor those programs.

28 ⁶ In view of the report from defendants on conditions at CHCF to
be filed in accordance with this order, the time for the Special
Master to file his report on defendants' inpatient programs will
be extended to April 30, 2014.

1 defendants currently lack sufficient inpatient hospital beds,
2 mental health crisis beds, and EOP beds to meet the need for such
3 services; and (2) the most recent mental health bed need study
4 shows that the projected bed need has increased over the need on
5 which defendants' current bed plan is based. In their reply,
6 defendants contend (1) plaintiffs' requests are not properly
7 before the court because they exceed the scope of defendants'
8 motion; (2) the recent order of the three-judge court extending
9 defendants time to comply with the population reduction order of
10 that court "nullifies" the Fall 2013 population projections
11 because compliance with the new deadline of the three-judge court
12 will involve implementation of measures that affect the Coleman
13 class; (3) defendants currently have sufficient capacity to meet
14 bed needs; and (4) the order requiring defendants to provide bed
15 need studies to the Special Master and plaintiffs' counsel has
16 expired by its own terms.

17 Defendants are correct that plaintiffs' opposition and
18 request for orders exceeds the precise issues raised by
19 defendants on their motion. On the other hand, the issues raised
20 by plaintiffs are significant, and defendants' responses appear
21 on first review to miss the mark.

22 Defendants are now before the court requesting an extension
23 of time until mid-2015--the twenty-year point in the remedial
24 phase of this action--to complete their planned treatment space.
25 Moreover, it is now apparent both that the remedial phase of this
26 action has extended past the end of 2013, the time originally set
27 by the court for completion of all construction in the currently
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1 approved bed plan, and that the remedial phase will continue at
2 least into 2016.⁷

3 As this court has made clear, defendants' remedy for the
4 Eighth Amendment violations in their delivery of mental health
5 care to class members must be durable. See Order filed March 3,
6 2014 (ECF No. 5092) at 5.⁸ In denying defendants' January 2013
7 termination motion, this court observed that "[s]hortages in
8 treatment space and access to beds at each level of mental health
9 care have plagued the entire remedial phase of this action."
10 Coleman v. Wilson, 938 F.Supp.2d 955, 983 (E.D.Cal. 2013). The
11 shortages in necessary beds and treatment space at every level of
12 defendants' mental health services delivery system (MHSDS) was
13 for years a seemingly intractable problem, manifesting in
14 egregious delays in access to necessary levels of care and
15 inappropriate housing placements for seriously mentally inmates,
16 including but not limited to actively suicidal class members.
17 See id. at, e.g., 969-970 (E.D.Cal. 2013). It took almost
18 seventeen years of remedial effort to achieve significant gains
19 in "timely and adequate access to inpatient care." Id. at 982.
20 At least in 2013, defendants still lacked a sufficient number of
21 adequate mental health crisis beds, id. at 982-83, and the
22 parties dispute whether that deficiency has been remedied. A
23 durable solution to constitutional violations that have taken

24 ⁷ February 28, 2016 is the new deadline for defendants to reduce
25 the prison population to 137.5% design capacity. Three-Judge
26 Court Order filed February 10, 2014 (ECF No. 5060) at 2.

27 ⁸ The three-judge court has also stressed the need for a durable
28 solution to the problem of prison overcrowding in California, a
requirement acknowledged by defendants. See Corrected Reply (ECF
No. 5090-1) at 9.

1 more than twenty years to remedy must include both an adequate
2 number of mental health beds in operation prior to final
3 termination of this action, and development and implementation of
4 a process for forecasting and planning for adequate bed and
5 treatment space for the mentally ill inmate population going
6 forward.

7 The court recognizes the complexities inherent in the tasks
8 required by the foregoing. At the status conference, defendants
9 informed the court that they are still contracting with John
10 Misener and McManis Consulting to project future mental health
11 population and bed needs. That is encouraging information. At
12 this juncture, the court will require defendants to confirm that
13 their revised mental health bed plan (the so-called "Blueprint"),
14 see Defs. Ex Parte Req. filed June 12, 2012 (ECF No. 4196) at 4,
15 provides for a sufficient number of mental health beds required
16 through December 2016 for the mental health population projected
17 in the Spring 2014 population projections, and to develop a new
18 bed plan if it does not. This determination shall be made in
19 consultation with the Special Master with notice to plaintiffs'
20 counsel at the discretion of the Special Master. Not later than
21 June 13, 2014, defendants shall report to the court on whether
22 the Blueprint is sufficient to meet the bed needs of the mental
23 health population projected through December 2016 by the Spring
24 2014 population projections.

25 Defendants shall also develop a process for forecasting and
26 planning for adequate bed and treatment space for the mentally
27 ill inmate population thereafter. Defendants shall assume
28 primary responsibility for the development of this process, which

1 shall be overseen by the Special Master to provide guidance and
2 expertise where necessary, to ensure its timely completion, and
3 to ensure that plaintiffs are provided notice and an opportunity
4 for input as appropriate.^{9,10}

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

6 1. Defendants January 21, 2014 motion regarding their
7 long-range mental health bed plan (ECF No. 4984) is
8 granted in part as follows:

9 a. Defendants are granted an extension of time
10 until March 31, 2014 to fully activate the LAC
11 project;

12 b. The deadline for full activation of the CCWF
13 project is extended. Defendants are ordered to
14 complete that project by June 2015 and to
15 accelerate its completion if feasible.
16 Defendants shall forthwith file a new
17 activation schedule for the CCWF project. The
18 notice and reporting provisions of this court's
19 January 4, 2010 order (ECF No. 3761) shall
20 apply in full force to this project, including
21 but not limited to monthly reports as to
22 whether the project has been or can be
23 accelerated. No interim completion dates set

24 ⁹ The court will not set a specific deadline for completion of
25 this task in this order, but expects defendants to work
26 diligently to complete it.

27 ¹⁰ The court expects all parties to take all steps necessary to
28 reduce or eliminate potential disputes as they arise and to work
diligently to avoid further litigation in these areas.

1 in the new activation schedule shall be
2 extended without leave of court.

3 c. Defendants are granted an extension of time to
4 fully activate all mental health units at CHCF.
5 Defendants shall provide monthly updates to
6 this court and to the Special Master until this
7 task is accomplished. On or before March 24,
8 2014 defendants shall file with the court and
9 serve on the Special Master and plaintiffs a
10 written report to this court on the status of
11 resolution of the deficiencies at CHCF
12 identified by the Plata Receiver. In addition,
13 defendants shall include in the first monthly
14 status report the results of their review of
15 whether the current salary schedule for prison
16 psychiatrists is competitive both within
17 California and nationally.

18 2. The deadline for the Special Master to file his
19 report on inpatient care is extended to April 30,
20 2014.

21 3. On or before June 13, 2014, defendants shall report
22 to the court on whether their revised mental health
23 bed plan (the Blueprint) is sufficient to meet the
24 bed needs of the mental health population projected
25 through December 2016 by the Spring 2014 population
26 projections.

27 4. Defendants shall develop a process for forecasting
28 and planning for adequate bed and treatment space

1 for the mentally ill inmate population going
2 forward. Defendants shall assume primary
3 responsibility for development of this process,
4 which shall be overseen by the Special Master in
5 accordance with this order.

6 DATED: March 18, 2014.

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