

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,
Plaintiffs,
v.
EDMUND G. BROWN, JR., et al.,
Defendants.

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

ORDER

On May 6, 2016, the Special Master filed his Twenty-Sixth Round Monitoring Report. ECF No. 5439. The report contains five recommendations for orders by this court. Neither party has filed objections to the report or its recommendations.

In the twenty-sixth round of monitoring, the Special Master and his team conducted on-site visits at all thirty-four California Department of Corrections and Rehabilitation (CDCR) prison institutions. ECF No. 5439 at 11.¹ The Twenty-Sixth Round Monitoring Report is a comprehensive report of his findings. As explained in this order, the court is surprised and disappointed by some of the findings and heartened by others. At this juncture, over twenty years after remedial efforts began in this action, the importance of bringing diligence, focus, and constructive action to the tasks that remain necessary to complete remediation and bring an end to

¹ In this order, all citations to ECF page numbers are to the page number assigned by the court's Electronic Case Filing (ECF) system and not to specific page numbers within the cited document.

1 federal court oversight cannot be overstated. The court acknowledges, with an appreciation of the
 2 immensity of the remediation project, the enormous efforts of everyone involved – the Special
 3 Master and his team, the plaintiffs, and the defendants and all of the state employees who are
 4 attending in good faith assiduously to their obligations under the orders of this court. The court
 5 also is acutely aware of the lengthy history of this case, the needs of the plaintiff class for, finally,
 6 a complete remedy, and defendants' desire to be relieved of court supervision.

7 **RELEVANT BACKGROUND**

8 As the court explained at a status conference approximately one year ago, this case
 9 should be on a path to concluding sooner rather than later, however sooner is defined. ECF No.
 10 5342 at 3. It is this court's expectation that, with clearly articulated goals and without
 11 unnecessary sidesteps, complete remediation can indeed be achieved in the foreseeable future.
 12 Planning must, however, be accompanied by prompt action. Repetition of efforts that clearly
 13 have failed in the past must be abandoned. And defendants must take a hard look at where they
 14 are housing mentally ill inmates if, as the evidence suggests, there are places and prisons where
 15 sufficient staff simply cannot be hired and adequate care cannot be provided.

16 The road map to the end of federal court oversight is clear. In 2011, the Special
 17 Master identified "seven general goals" for defendants:

- 18 (1) Re-evaluation and updating of CDCR suicide prevention
 19 policies and practices;
- 20 (2) Ensuring that seriously mentally ill inmates are properly
 21 identified, referred, and transferred to receive the higher levels of
 22 mental health care that they need and that are only available from
 23 the Department of Mental Health (DMH)²;
- 24 (3) Review of, and compliance with, all elements of their
 25 Administrative Segregation Unit (ASU) Enhanced Outpatient
 26 Program (EOP) Treatment Improvement Plan, including the
 27 conduct of a review every 30 days of all EOP inmates housed in
 28 ASU hubs for over 90 days;
- 29 (4) Completion of the construction of mental health treatment space
 30 and beds for inmates at varying levels of care;

27 ² California's Department of Mental Health is now known as the Department of State Hospitals
 28 (DSH).

1 (5) Full implementation of defendants' new mental health staffing
 2 plan;

3 (6) Training of staff for greater collaboration between custody and
 4 mental health; and

5 (7) Refinement and implementation of the Mental Health Tracking
 6 System (MHTS.net)³ to its fullest extent and benefit.

7 ECF No. 4124 at 85. The Special Master found in 2011 that there had "been progress toward
 8 some of these goals." *Id.*

9 Following extended detours into litigation in 2013, the court issued orders
 10 outlining additional remedial obligations regarding adequacy of DSH inpatient programs, ECF
 11 No. 4688, access to higher levels of care for California's condemned inmates, ECF No. 4951,
 12 policies regarding use of force, disciplinary procedures, and strip searches involving mentally ill
 13 inmates, and placement of mentally ill inmates in administrative segregation and segregated
 14 housing units. ECF No. 5131. In addition, on March 2, 2015, this court approved a final
 15 settlement in *Hecker v. CDCR*, No. 2:05-cv-2441 KJM DAD, a class action brought under the
 16 Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA), which merged some
 17 remaining ADA and RA issues into this action and its monitoring process. *See* ECF No. 5439 at
 18 67-75.

19 Significantly, prior to the 2013 litigation activity, in adopting the Special Master's
 20 Twenty-Fourth Round Monitoring Report in 2012, the court "emphasize[d] in particular its
 21 complete concurrence with the Special Master's finding that '[a]n important goal of the remedial
 22 phase of this case is, . . . , for CDCR itself to assume the mantle of ultimate responsibility for
 23 diagnosing of its own problems, i.e. conduct its own 'qualitative analysis,' and create a quality
 24 improvement process that it can use to achieve and maintain compliance, and *move on to eventual*
 25 *removal from federal court oversight.*" ECF No. 4232 at 4-5 (quoting Twenty-Fourth Round
 26 Monitoring Report at 65) (emphasis in order). This finding, blessed by the court, has led to the

27 ³ As the Special Master explained in his Twenty-Third Round Monitoring Report, "A well-
 28 functioning MHTS.net is an indispensable [sic] tool for defendants in a number of areas, helping
 them deliver direct care, assess and manage their own performance, and report on it, with the aid
 of current and accurate readily available information." ECF No. 4124 at 88.

1 development of the continuous quality improvement tool (CQIT), which is being used in the
 2 administrative segregation EOP hub certification process, and is slated for “trial implementation
 3 . . . at ten selected institutions during the upcoming Twenty-Seventh Monitoring Round.” ECF
 4 No. 5439 at 112-13. In order to focus on development of CQIT, the Special Master temporarily
 5 “suspended” the Twenty-Sixth Monitoring Round, which ultimately began in February 2015.

6 The state of progress toward the end of federal oversight also is clear in the reports
 7 filed by the Special Master. The last on-site prison tours by the Special Master and his team
 8 ended in August 2012, and the results of those tours were reported to the court in the Twenty-
 9 Fifth Round Monitoring Report, filed January 18, 2013. ECF No. 4298.⁴ Therein, the Special
 10 Master reported that while defendants had “made significant progress toward achieving their
 11 seven general goals, more work remains to be done before all of these goals are met.” *Id.* at 50.
 12 As the court and the parties know too well, in the three and a half years since that monitoring
 13 report was filed, attention was diverted from completion of the remaining goals, with the
 14 inevitable consequence of delaying progress toward complete remediation. That consequence is
 15 all too evident in the Twenty-Sixth Round Monitoring Report. The Report also suggests,
 16 however, that the required focus is returning to the remaining remedial tasks.

17 TWENTY-SIXTH ROUND REPORT

18 In the Twenty-Sixth Round Monitoring Report, the Special Master has updated the
 19 status of six of the general goals identified in 2011, the progress in developing and implementing
 20 CQIT, and the program access issues merged in from *Hecker*. See ECF No. 5439 at 22-43
 21 (staffing), 60-67 (custody/mental health relations), 67-75 (program access), 75-83 (construction),
 22 83-96 (access to higher levels of care), 96-104 (administrative segregation EOP), 104-128
 23 (MHTS.net and CQIT). The program for access to higher levels of care for condemned inmates
 24 at San Quentin was completed in December 2014. ECF No. 5439 at 271. The other general goal,
 25 CDCR’s suicide prevention policies and practices, is the subject of a separate report, the latest of
 26

27 ⁴ Following a court order directing him to review defendants’ objections and motion to strike or
 28 modify portions of the report, on March 19, 2013, the Special Master filed corrections to that
 report. ECF No. 4420.

1 which was filed January 13, 2016, ECF Nos. 5395, 5396, and adopted in full by this court on
2 April 5, 2016, ECF No. 5429. The status of inpatient programs is the subject of separate
3 monitoring reports filed by the Special Master, most recently on May 25, 2016. ECF Nos. 4380,
4 5156, 5448. In addition, the Special Master continues to report to the court on completed suicides
5 in the CDCR inmate population. *See, e.g.*, ECF Nos. 5399 (suicides completed in 2013), 5428
6 (suicides completed in 2014). The Special Master also reports, in the most recent Monitoring
7 Report, that defendants have “recently implemented a number of new initiatives” in the areas
8 covered by the court’s April 2014 order, ECF No. 5131, and that he will “monitor the
9 implementation of these policies and any culture changes resulting therefrom” in his Twenty-
10 Seventh Round of monitoring. ECF No. 5439 at 66-67.

11 The recommendations in the Twenty-Sixth Round Monitoring Report are focused
12 on three key areas: adequate mental health staffing; necessary collaboration between custody and
13 mental health staff; and extension of the continuous quality improvement tool (CQIT).

14 ADEQUATE STAFFING

15 With respect to staffing, the Special Master recommends that (1) defendants be
16 required to provide him with monthly updates on the implementation of their staffing plan and
17 that they be required to meet with the Special Master monthly “to discuss and consider strategies
18 and initiatives, including but not limited to potential clustering of higher-acuity mentally ill
19 inmates at those institutions where it has been shown that mental health can be more readily
20 attracted and retained, all to resolve the problem of mental health staffing in CDCR prisons in a
21 thorough and lasting way;” (2) that he be ordered to file a stand-alone report on the status of
22 mental health staffing and defendants’ implementation of their plan within 120 days; and (3) that
23 defendants be directed to complete and implement the new peer review process. ECF No. 5439 at
24 141-42.

25 In making the foregoing recommendations, the Special Master demonstrates more
26 patience than this court would accept absent his long experience and strenuous efforts in this
27 remedial process. The Twenty-Sixth Round Monitoring Report describes in great detail the
28 “long and tortured” history of “CDCR’s struggle to implement a viable staffing plan for the

1 provision of adequate mental health treatment” and the absence of improvement in the “[c]hronic
2 understaffing of CDCR mental health positions” and the “stagnat[ion]” of “CDCR’s
3 implementation of its most recent mental health staffing plan.” ECF No. 5439 at 16, 22-43. The
4 Special Master reports that “[v]acancies in the key mental health clinical disciplines of psychiatry
5 and psychology remained problematic and were nearly unchanged from rates in **1998**. . . .” *Id.* at
6 16 (emphasis added).

7 Several factors appear to be at work in defendants’ failed efforts to hire and retain
8 sufficient numbers of mental health staff, including but not limited to the geographic locations in
9 which defendants continue to house significant numbers of seriously mentally ill inmates. The
10 ongoing rise in the numbers of mentally ill inmates in California’s prisons, *see* ECF No. 5439 at
11 134-135, compounds defendants’ difficulties, as staffing levels are based on inmate/staff ratios,
12 *see, e.g.*, ECF No. 5269 at 6. Defendants have reported to the court that “its pay for psychiatrists
13 is competitive with other private and public employers.” ECF No. 5269 at 9. As of February
14 2015, they planned to nonetheless pursue “differential pay” for psychiatrists working in “hard-to-
15 recruit” institutions. *Id.* It is not at all clear to this court that additional pay will solve this deep-
16 seated problem and the court can no longer sanction the continued pursuit of remedial strategies
17 that have not worked in the past. While the court will adopt the Special Master’s
18 recommendation, it will give defendants four more months to work with him to devise a
19 meaningful strategy that will, finally, mean mentally ill inmates are located in institutions that are
20 adequately staffed with mental health staff competent to meet their treatment needs. To be clear:
21 the court expects more than a mere plan. The court requires that the report from the Special
22 Master demonstrate clear action in accordance with planned steps and a measurable timeline by
23 which those steps will be completed.

24 **COLLABORATION: CUSTODY AND MENTAL HEALTH**

25 Constitutionally adequate mental health care requires not only sufficient staff. For
26 reasons recognized in the foundational orders in this case, and that have become obvious over the
27 last twenty years, it also requires a collaborative culture between custody and mental health staff
28 in each prison institution that houses mentally ill inmates. The court has recognized the

1 “inevitable tensions created by the distinct needs of custody supervision and the distinct needs for
2 mental health care,” and the consequences that arise from “the fact that California incarcerates
3 tens of thousands of seriously mentally [ill] individuals in its state prison system.” ECF No. 5131
4 at 3 & n.5. It appears there may be some prison institutions in California that simply are unable
5 to achieve the necessary collaboration. For example, the Special Master reports that in spite of
6 focused efforts that began at Salinas Valley State Prison (SVSP) in 2009, the cultural concerns at
7 that institution were “so concerning” to the Special Master’s monitor in February 2015 “as to
8 necessitate a second visit.” ECF No. 5439 at 61, 65-66. Intervening monitoring reports had
9 shown ongoing serious problems in the treatment of mentally ill inmates by custody staff at SVSP
10 in spite of training efforts. *Id.* at 62. Collaboration training was conducted at seven institutions
11 following submission of an amended plan in October 2009. Despite this training, the Special
12 Master’s 26th Report identifies ongoing culture clashes at five of the seven institutions, including
13 SVSP. *Id.* at 61, 63, 65. That seven years have been expended on unsuccessful efforts to train
14 custody staff in the proper treatment of mentally ill inmates cannot be countenanced and should
15 be of concern to every defendant in this action. The court also notes the report from the Office of
16 the Inspector General (OIG) concerning High Desert State Prison, *id.* at 63 & n.21, which raises
17 grave questions about the viability of mental health programming at that institution.

18 The festering problems at some institutions do not obscure the court’s ability to see
19 that a number of institutions are successfully creating a collaborative culture between custody and
20 mental health staff. A successful culture must be established at all institutions where defendants
21 house seriously mentally ill inmates. To this end, the Special Master recommends an order
22 directing that he and defendants “meet and confer to discuss, consider, and develop strategies and
23 initiatives to improve collaboration between custody and mental health . . . with an eye toward
24 long-term and sustainable culture change.” *Id.* at 142. The court will adopt that recommendation
25 with the expectation that six months from the date of this order is more than enough time to
26 present a plan that identifies an effective comprehensive strategy recognizing the problems noted
27 above, and to begin its implementation.

1 CQIT

2 Finally, the Special Master's recommendation concerning the plan and agreement
3 for a trial implementation of CQIT at ten CDCR institutions during the next monitoring round
4 will be adopted. As defendants recognize, the successful implementation of CQIT is a key
5 marker of success on the road to ultimate termination of this court's oversight. The court
6 anticipates a favorable report on the trial implementation from the Special Master in his Twenty-
7 Seventh Round Monitoring Report.

8 ADDITIONAL CONCERNS

9 Two additional matters bear noting. The Special Master reported that the EOP
10 administrative segregation hub at Richard J. Donovan Correctional Facility had significantly
11 exceeded its court-ordered capacity from August through December 2015. *Id.* at 139. Given the
12 apparent violation of court orders, the court has checked with the Special Master to determine
13 whether this non-compliance was ongoing. He has reported to the court that defendants have
14 come into compliance with the court's orders and, accordingly, the court will take no further
15 action on this matter at this time.

16 In addition, while the time lost to implementation of adequate policies and
17 practices in the rules violation process for class members cannot be made up, it must be offset
18 now by focused action, without further delay. The court fully expects RVR training will be
19 completed and taking root by the time of the Twenty-Seventh Round Monitoring Report.

20 CONCLUSION

21 Accordingly, good cause appearing, IT IS HEREBY ORDERED that:

22 1. Defendants shall provide the Special Master with monthly updates on their
23 implementation of their staffing plan, which implementation shall be tracked and monitored by
24 the Special Master. Defendants and the Special Master shall meet and confer monthly to discuss
25 and consider strategies and initiatives, including but not limited to potential clustering of higher-
26 acuity mentally ill inmates at those institutions where it has been shown that mental health staff
27 can be more readily attracted and retained, all to resolve the continuing problem of mental health
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1 staffing in CDCR prisons in a thorough and lasting way. The Special Master shall include
2 plaintiffs in these meetings as appropriate.

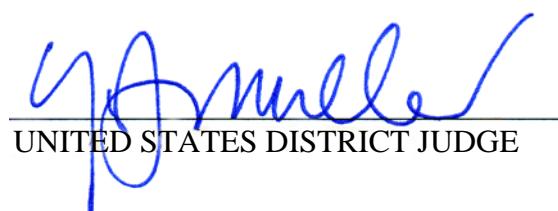
3 2. Within one hundred twenty days (120) from the date of this order the Special
4 Master shall issue a stand-alone report on the status of mental health staffing and implementation
5 of defendants' staffing plan.

6 3. The CDCR defendants shall complete their new peer review process and
7 implement it so that the mental health clinical disciplines of psychiatry, psychology, and social
8 work at all 34 CDCR institutions undergo peer review under the new process on a regular basis.

9 4. Defendants and the Special Master shall meet and confer to discuss, consider,
10 and develop strategies and initiatives to improve collaboration between custody and mental health
11 at all institutions where mentally ill inmates are housed. The Special Master shall include
12 plaintiffs in these meetings as appropriate. Strategies may include additional or modified
13 trainings, enhanced communication, and leadership development. The goal of any training or
14 change in methods of communication across disciplines should be developed with an eye toward
15 long-term and sustainable cultural change. The court expects identification of a comprehensive
16 strategy and the start of its implementation at the institutions where it is required within six
17 months from the date of this order.

18 5. The court adopts the plan and agreement described in the Twenty-Sixth Round
19 Monitoring Report, ECF No. 5439, for CDCR to conduct its trial implementation of CQIT at ten
20 CDCR institutions, in the manner described in the Twenty-Sixth Round Monitoring Report,
21 during the Special Master's Twenty-Seventh Monitoring Round.

22 DATED: August 7, 2016.

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26 UNITED STATES DISTRICT JUDGE
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