

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

Defendants have filed a request to add two matters to the agenda for discussion at the January 20, 2017 status conference. ECF No. 5525. Defendants' written request follows an oral request made at the November 10, 2016 status conference, at which time the court directed defendants to file in writing their "proposed definition of the topic" so the court could determine whether it would either "approve or modify" the proposed topic for discussion. *See* ECF No. 5521 at 31.

Defendants propose two topics for discussion. The first concerns "efforts to reach agreement between the parties and the Special Master concerning issues that no longer require Court monitoring" and "the development of a process to end Court oversight of those matters for which defendants have demonstrated constitutional compliance...." ECF No. 5525 at 1. The second topic, related to the first, is scheduling regular status conferences with the court to "allow Defendants to better apprise the court of . . . successes, as well as challenges that arise" and to

1 obtain “periodic guidance” from the court “on, among other things, determining when the goals
 2 set forth in the Court’s August 9, 2016 order discussing the roadmap to the end of federal court
 3 oversight may be met.” ECF No. 5525 at 2.

4 Process to End Court Oversight

5 This action has a long and well established process for measuring defendants’ compliance
 6 with their remedial duties. In 1995, at the start of the remedial phase, the court referred the matter
 7 to a Special Master. *See* ECF No. 640. The duties of the Special Master are outlined in the
 8 Order of Reference, filed December 11, 1995. *Id.* In relevant part here, one of the duties of the
 9 Special Master is to “prepare and file with the court periodic reports assessing defendants’
 10 compliance with [the] remedial plan as the court may order.” *Id.* at 4. The order also makes
 11 provision for the parties to submit written objections to the Special Master before compliance
 12 reports are filed with the court and requires the Special Master to consider those objections. *Id.* at
 13 4-5. Finally, the order provides that

14 any compliance report of the special master filed in accordance
 15 with [the order] shall be adopted as findings of fact and conclusions
 16 of law of the court unless, within ten days after being served with
 17 the filing of the report, either side moves to reject or modify the
 18 report. The court will entertain no objection to the report unless an
 19 identical objection was previously submitted to the special master
 20 in the form of a specific written objection in accordance with the
 provisions of paragraph A(5) above. The objecting party shall note
 each particular finding or recommendation to which objection is
 made, shall provide proposed alternative findings or
 recommendations, and may request a hearing before the court.
 Pursuant to Fed. R. Civ. P. 53(e)(2), the court shall accept the
 special master’s findings of fact unless they are clearly erroneous.

21 *Id.* at 8.

22 To date, the Special Master has filed one hundred thirty-one reports on the status of
 23 defendants’ development of and compliance with the original remedial plan approved by the
 24 court, now known as the Program Guide, and with other court-ordered remedial measures.^{1 2 3}

25 ¹ The Special Master’s compliance monitoring reports are found at Dkt. Nos. 671, 678,
 26 785, 850, 981, 995, 1000, 1036, 1093, 1144, 1213, 1270, 1303, 1317, 1373, 1446, 1519, 1553,
 27 1587, and ECF Nos. 1649, 1746, 1749, 2081, 2082, 2140, 2180, 2274, 2334, 2895, 3029, 3638,
 28 4124, 4205, 4298, 5439. (The use of “Dkt.” references a filing made prior to implementation of
 the court’s CM/ECF electronic filing system; “ECF” references a filing made after
 implementation.)

Having reviewed the process set out in the Order of Reference and its implementation to date, the court concludes it has functioned as intended. The court finds no reason to change it now. Moreover, the court has in several orders already outlined the goals that remain, most recently in the August 9, 2016 order. *See* ECF No. 5477. In light of the court's orders, the many detailed reports the Special Master has provided, and the numerous focused workgroup meetings he has conducted with defendants and with the parties, defendants already have sufficient guidance to map an end of federal court oversight.

8 With respect to removing issues from monitoring by the Special Master, defendants note
9 in their request the parties currently are working with the Special Master in an effort to reach
10 agreement on matters that may be removed from such monitoring. Consistent with the Order of
11 Reference, the court expects to hear from the Special Master in due course on any agreement
12 reached with the parties to reduce particular areas of his monitoring and that will be the
13 appropriate time for the court to review any proposals to transfer monitoring from the Special
14 Master to defendants.

15 As noted, defendants also want to discuss “development of a process to end Court

² The other reports filed by the Special Master are found at Dkt. No. 958 (recommended schedule for implementation of quality assurance plans); Dkt. Nos. 994, 1032, 1033, 1149, 1205, 1206, 1227, 1304, 1351, 1392, ECF Nos. 1661, 1762, 1851, 1921, 2121 (staffing); Dkt. No. 974 (staffing and use of force); Dkt. No. 1008 (administrative segregation, involuntary medications, and identifier coding); Dkt. Nos. 1053, 1082, 1122, 1130, 1224, 1263, 1282, 1326, 1366; Dkt. Nos. 1172, 1235, 1240, 1265, 1272, 1315, 1369, 1410, 1593, 1599, 1602; ECF Nos. 1969, 1994, 2117, 2133, 2186, 2208, 2432, 3758, 4020, 4830, 5156, 5363, 5448 (issues related to access to inpatient beds and mental health crisis beds, bed planning, and adequacy of inpatient mental health care); Dkt. Nos. 1296, 1297, ECF Nos. 1658, 1806, 2084, 2210, 2339, 2566, 3030, 3677, 3918, 4008, 4009, 4109, 4110, 4121, 4307, 4308, , 4375, 4376, 5258, 5259, 5324, 5325, 5395, 5396, 5398, 5399, 5427, 5428 (completed suicides and suicide prevention measures); Dkt. No. 1350 (addressing several issues as required by two court orders); Dkt. No. 1381 (defendants' Intensive Outpatient Care study); ECF Nos. 2302, 2639 (Enhanced Outpatient Program in Reception Centers); ECF No. 4730 (quality improvement process); and ECF Nos. 5164, 5257 (San Quentin Psychiatric Inpatient Program); ECF No. 5266 (implementation of RVR policies and procedures).

1 oversight of those matters for which defendants have demonstrated constitutional
2 compliance. . . .” ECF No. 5525 at 1. Defendants have offered no examples of areas in which
3 they believe constitutional compliance has been demonstrated, nor have they suggested how or
4 whether any such areas could be removed from federal court oversight while remediation in other
5 areas remains ongoing. This is not a topic that can be discussed in the abstract. As the long
6 history of laborious efforts to remedy significant constitutional violations in the delivery of
7 mental health care to California’s seriously mentally ill prisoners shows, most of the remedies
8 required are interconnected and non-compliance in one area can have a ripple effect into others.
9 This is currently shown most clearly in the recurrence of wait lists for inpatient care, which is
10 impacting once again not only timely access to inpatient care but also access to mental health
11 crisis beds. It also is demonstrated in the ongoing staffing shortages that persistently plague the
12 mental health care delivery system.

13 The history also reflects uneven compliance with remedial requirements across
14 California’s thirty-five prisons, with some institutions achieving compliance in some areas and
15 not others, some institutions achieving compliance for periods of time and then falling out of
16 compliance, and only relatively few institutions achieving across the board compliance with
17 Program Guide requirements and maintaining that compliance for a significant period of time. As
18 the Special Master noted in his most recent monitoring report, “institutional performance had
19 improved in some areas, remained generally static in others, and had regressed in yet others.”
20 ECF No. 5439 at 16.

21 The most recent round of monitoring was conducted after a two-and-a-half year hiatus in
22 monitoring occasioned primarily by defendants’ premature motion to terminate this action,
23 followed by litigation that revealed substantial ongoing constitutional violations and necessitated
24 additional remedial orders. *See* ECF No. 5439 at 11-12. At this juncture, it should be crystal
25 clear that the remedy in this action must be complete, and it must be durable before the court
26 fades away. *Cf. Coleman v. Brown*, 922 F. Supp. 1004, 1043 (E.D. Cal. & N.D. Cal. 2013)
27 (quoting *Horne v. Flores*, 557 U.S. 433, 447 (2009)). Many interrelated factors are at play in any
28 assessment of partial compliance: the ongoing remedial work required by the orders that followed

1 the litigation in 2013 and 2014, the recurrence of waitlists for inpatient care and the
2 corresponding effects of those waitlists on other levels of mental health care, ongoing serious
3 staffing shortages, and the regression of institutional compliance absent monitoring by the Special
4 Master. It is impossible for the court, on the record before it, to assess whether court oversight
5 might be ended in certain discreet areas while remedial work continues in others. If indeed partial
6 termination is possible and appropriate, identification of those opportunities and a plan for how
7 oversight might be ended must be developed in the first instance as a proposal by the parties in
8 consultation with the Special Master. Defendants have not shown why the court's greater
9 involvement in this process is required at this time.

10 Regular Status Conferences

11 Defendants ask the court to consider scheduling regular status conferences with the court
12 to "allow Defendants to better apprise the court of . . . successes, as well as challenges that arise"
13 and to obtain "periodic guidance" from the court "on, among other things, determining when" the
14 tasks described in the court's August 9, 2016 order, completion of which is a prerequisite to a
15 complete remedy and the end of federal court oversight, "may be met." ECF No. 5525 at 2.

16 As it has shown, the court will meet with the parties when, in the court's view, such
17 meetings are necessary to move the remaining remedial tasks forward. The court will continue to
18 set status conferences until all remedial tasks are complete. The court will not, however,
19 substitute itself for the Special Master or the reporting process set in place by the Order of
20 Reference and followed for the past twenty years.

21 Going forward, the court plans to have at least annual status conferences, which will be set
22 at the court's discretion based on the state of the record and the needs identified by either the
23 court or the Special Master.

24 Additional Considerations

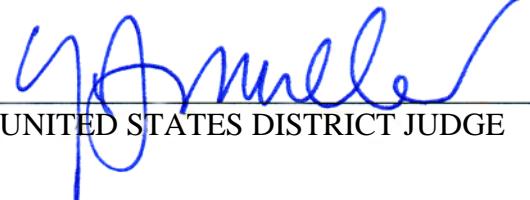
25 Finally, the court is compelled to observe – as noted in a separate order as well -- that the
26 Special Master sought an extension of time to report to the court on the status of mental health
27 staffing and implementation of defendants' staffing plan beyond the 120-day period set in the
28 court's August 9, 2016 order. His extension request was prompted by defendants' inability to

1 complete all proposals for a staffing plan to finally remedy the twenty-year deficit in adequate
2 mental health staffing in time for the Special Master to file his stand-alone staffing report by the
3 court's original deadline. While the Special Master notes some of the delay resulted from factors
4 beyond defendants' control, *see* ECF No. 5523 at 3, the delay in this instance informs the court's
5 view that the current processes for monitoring and ultimately ensuring compliance should not to
6 be altered.

7 For all of the foregoing reasons, defendants' request to expand the agenda for the
8 January 20, 2017 status conference will be denied. The court expects that, in preparing his
9 monitoring and other reports, the Special Master will continue to identify, with clarity and
10 specificity, the steps that remain toward satisfactory completion of the goals and other remedial
11 obligations described in the court's August 9, 2016 order.

12 In accordance with the above, IT IS HEREBY ORDERED that defendants' request to add
13 items to the agenda for the January 20, 2017 status conference is denied.

14 DATED: December 8, 2016.

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UNITED STATES DISTRICT JUDGE
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