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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

In ongoing sequelae to defendants' January 7, 2013 motion to terminate this action (hereafter "termination motion")(ECF No. 4275), two additional motions brought by plaintiffs for enforcement of court orders and affirmative relief are before the court.¹ On May 9, 2013, plaintiffs filed a motion related to housing and treatment of mentally ill inmates placed in segregation units in California's prison system (ECF No. 4580). On May 29, 2013, plaintiffs filed a motion related to use of force and disciplinary measures against members of the plaintiff

¹ A third motion related to inpatient mental health care (ECF No. 4543) was filed by plaintiffs on April 11, 2013 and resolved by orders filed July 11, 2013 (ECF No. 4688) and December 10, 2013 (ECF No. 4951).

1 class (ECF No. 4638).

2 The matters at bar were also tendered as grounds for denying
3 defendants' termination motion. See Corr. Pls. Opp. To Defs.
4 Motion to Terminate, filed Mar. 19, 2013 (ECF No. 4422) at 58-65;
5 87-91.² The court denied the termination motion by order filed
6 April 5, 2013, see Coleman v. Brown, 938 F.Supp.2d 955 (E.D.Cal.
7 2013), and separately set an evidentiary hearing on plaintiffs'
8 motions. In relevant part, evidentiary hearing on plaintiffs'
9 motions commenced on October 1, 2013, continued over twenty-eight
10 court days and concluded on December 9, 2013.³ Following the
11 filing of closing briefs and responses thereto by the parties,
12 the matters were submitted for decision.⁴

13 Because the plaintiffs relied in part on the matters
14 considered in this order, the court holds that this order is a
15 further demonstration that the order denying the motion to
16 terminate was properly denied.

17 Plaintiffs' motions present two questions: First, have
18 defendants sufficiently remedied Eighth Amendment violations in
19 use of force, disciplinary measures, and segregated housing
20 relative to class members, which were identified in the court's

21 ² Throughout this order, all citations to page numbers of documents in the
22 court's electronic case file (ECF) are to the ECF page number at the top of
23 each page.

24 ³ Approximately five of those days were spent on testimony related to
25 plaintiffs' motion concerning access to inpatient hospital care for inmates on
26 death row (ECF No. 4543). As noted in footnote 1, supra, that motion has been
27 resolved by separate order.

28 ⁴ By order filed March 6, 2014 (ECF No. 5095), proceedings on plaintiffs' May
6, 2013 motion were reopened pending defendants' response to documents
submitted pursuant to a March 3, 2014 request for judicial notice by
plaintiffs. With the filing of defendants' response (ECF No. 5120),
plaintiffs' May 6, 2013 motion was resubmitted.

1 1995 decision on the merits of plaintiffs' Eighth Amendment
2 claims? Second, if the answer to the first question is no, what
3 additional remedial measures are required to end ongoing Eighth
4 Amendment violations in these areas?

5 At the outset, the court wishes to recognize the overall
6 significant progress the defendants have made relative to
7 providing constitutionally required care to the plaintiffs'
8 class. Indeed, though defendants' motion to terminate was
9 clearly premature, recognition of the progress made is important.
10 Nonetheless, for the reasons discussed below, the answer to the
11 first question is no. The answer to the second question is
12 determined by what the Eighth Amendment requires when seriously
13 mentally ill individuals are incarcerated.

14 The very difficult questions presented by the motions at bar
15 are a consequence of the fact that California incarcerates tens
16 of thousands of seriously mentally individuals in its state
17 prison system.^{5,6} As of September 2013, there were 33,259 inmates

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19 ⁵ California is not alone in what the sheriff of Cook County, Illinois has
20 described as "'criminalizing mental illness.'" Kristof, N., "Inside a Mental
21 Hospital Called Jail", New York Times, February 10, 2014. According to Mr.
22 Kristof's article, "[n]ationwide in America, more than three times as many
23 mentally ill people are housed in prisons and jails as in hospitals" and
24 "[s]ome 40 percent of people with serious mental illnesses have been arrested
25 at some point in their lives." *Id.* What Sheriff Dart described about Cook
County is equally true of California: "We've systematically shut down all the
mental health facilities, so the mentally ill have nowhere else to go. [The
prison system has] become the de facto mental health hospital." *Id.* Indeed,
it is the court's view that many of the problems giving rise to this suit and
ongoing efforts at remediation arise from the inevitable tensions created by
the distinct needs of custody supervision and the distinct need for mental
health care.

26 ⁶ The questions at bar also arise as a consequence of the severe overcrowding
27 that has plagued California's prison system for more than a decade, leading
28 to, *inter alia*, insufficient space for differentiated housing programs, and
delays in transfer to appropriate housing. *See* Reply Expert Declaration of
James Austin, filed August 23, 2013 (ECF No. 4762) at ¶¶ 39, 44.

1 identified in the California Department of Corrections and
2 Rehabilitation's (CDCR) outpatient mental health population. Pls.
3 Ex. 2303.⁷ The number of mentally ill inmates represents
4 approximately 28.25% of the inmate population housed in CDCR's
5 prison institutions.⁸ These inmates received mental health care
6 through the CDCR's Mental Health Services Delivery System
7 (MHSDS), which provides four levels of mental health care. An
8 understanding of the treatment criteria for each level of mental
9 health care is necessary to resolution of the motions at bar.⁹

10
11 ⁷ This represents an increase from the 32,955 inmates in the mental health
outpatient population in June 2013. See Pls. Ex. 2301.

12 ⁸ This is based on a total population of 120,162 inmates housed in
13 California's prison institutions, not including camps, as of September 18,
2013. See Weekly Report of Population as of Midnight, September 18, 2013,
14 posted in the population reports at www.cdcr.ca.gov.

15 ⁹ In order to receive treatment in the MHSDS an inmate must meet at least one
of three general criteria listed in the Program Guide:

16 1. Treatment and monitoring are provided to any inmate who has current
17 symptoms and/or requires treatment for the current Diagnostic and Statistical
Manual diagnosed (may be provisional) Axis I serious mental disorders listed
below:

18 Schizophrenia (all subtypes)

19 Delusional Disorder

20 Schizophreniform Disorder

21 Schizoaffective Disorder

22 Brief Psychotic Disorder

23 Substance-Induced Psychotic Disorder (exclude intoxication and withdrawal)

24 Psychotic Disorder Due To A General Medical Condition

25 Psychotic Disorder Not Otherwise Specified

26 Major Depressive Disorders

27 Bipolar Disorders I and II

28 2. Medical Necessity Mental health treatment shall be provided as needed.

Treatment is continued as needed, after review by an IDTT, for all cases in
which:

Mental health intervention is necessary to protect life and/or treat
significant disability/dysfunction in an individual diagnosed with or
suspected of having a mental disorder. Treatment is continued for these cases
only upon reassessment and determination by the IDTT that the significant or
life threatening disability/dysfunction continues or regularly recurs.

3. Exhibitionism Treatment is required when an inmate has had at least one
episode of indecent exposure in the six-month period prior to the IDTT that
considers the need for exhibitionism treatment and the inmate patient is
either:

• Diagnosed with Exhibitionism, or

• Meets the alternate criteria. (*Alternate Criteria*: An inmate who meets all

1 All members of the plaintiff class suffer from serious
2 mental disorders. The Correctional Clinical Case Management
3 System (CCCMS) provides mental health services to seriously
4 mentally ill inmates with "stable functioning in the general
5 population, Administrative Segregation Unit (ASU) or Security
6 Housing Unit (SHU)" whose mental health symptoms are under
7 control or in "partial remission as a result of treatment." Pls.
8 Ex. 1200, MHSDS Program Guide, 2009 Revision, at 12-1-7. In
9 September 2013, 28,360 mentally ill inmates were at the
10 Correctional Clinical Case Management (CCCMS) level of care.
11 Pls. Ex. 2303.

12 The remaining three levels of mental health care are for
13 seriously mentally ill inmates who, due to their mental illness,
14 are unable to function in the general prison population. The
15 Enhanced Outpatient Program (EOP) is for inmates with "acute
16 onset or significant decompensation of a serious mental
17 disorder." Pls. Ex. 1200 at 12-1-7, 12-1-8. EOP programs are
18 located in designated living units at "hub institution[s]." Id.
19 at 12-1-8. In September 2013, 4,538 mentally ill inmates were at
20 the Enhanced Outpatient Program (EOP) level of care. Pls. Ex.
21 2303.

22 Mental Health Crisis Beds (MHCBS) are for mentally ill
23 inmates in psychiatric crisis or in need of stabilization pending
24 transfer either to an inpatient hospital setting or a lower level

25 criteria for the diagnosis of Exhibitionism, except that the victim was not an
26 "unsuspecting stranger" but was a staff member or inmate who did not consent
to or encourage the behavior.)

27 (A diagnosis of Exhibitionism is not required for inmates who meet the
alternate criteria.)

28 Pls. Ex. 1200 at 12-1-5, 12-1-6.

1 of care. Pls. Ex. 1200, Program Guide at 12-1-8. MHCBS are
2 generally licensed inpatient units in correctional treatment
3 centers or other licensed facilities. Id. at 12-1-9. Stays in
4 MHCBS are limited to not more than ten days. Id. at 12-5-1.¹⁰
5 Finally, several inpatient hospital programs are available for
6 class members. With one exception¹¹ the inpatient programs are
7 operated by the Department of State Hospitals (DSH). Id. at 12-
8 1-9. Some of those programs are on the grounds of state prisons,
9 while others are in existing state hospitals.

10 In addition to the foregoing, resolution of the motions at
11 bar turns on understanding the nature of the inquiry before the
12 court. In relevant part, in 1995 this court found that
13 "seriously mentally ill inmates [are] being treated with punitive
14 measures by the custody staff to control the inmates' behavior
15 without regard to the cause of the behavior, the efficacy of such
16 measures, or the impact of those measures on the inmates' mental
17 illnesses." Coleman v. Wilson, 912 F.Supp. 1282, 1320 (E.D.Cal.
18 1995). The court also found that "mentally ill inmates are
19 placed in administrative segregation and segregated housing
20 without any evaluation of their mental status, because such
21 placement will cause further decompensation, and because inmates
22 are denied access to necessary mental health care while they are
23 housed in administrative segregation and/or segregated housing."
24 Id. at 1320. Finally, the court found that "weapons are used on

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26 ¹⁰ Exceptions to the maximum length of stay in an MHCB must be approved by
"the Chief Psychiatrist or designee." Id. at 12-5-1.

27 ¹¹ The exception is a relatively new program for female inmates operated by
28 CDCR at California Institution for Women (CIW).

1 inmates with serious mental disorders without regard to the
2 impact of those weapons on their psychiatric condition, and
3 without penological justification." Id. at 1323.¹²

4 In analyzing the merits of plaintiffs' claims, the court
5 applied the well-settled principle that "[a]n Eighth Amendment
6 violation is comprised of both an objective component and a
7 subjective component." Id. at 1298 (citing Wilson v. Seiter, 501
8 U.S. 294, 298 (1991)). The objective component turns on whether
9 the alleged deprivations are "sufficiently serious" to constitute
10 the "'unnecessary and wanton infliction of pain'" proscribed by
11 the Eighth Amendment. Wilson, 501 U.S. at 298 (quoting Rhodes v.
12 Chapman, 452 U.S. 337, 346 (1981)). The findings in the
13 preceding paragraph formed the objective component of the Eighth
14 Amendment violations at issue.

15 The subjective component of an Eighth Amendment violation
16 requires a finding that the defendants have a "sufficiently
17 culpable state of mind". Wilson, 501 U.S. at 298 (citing
18 Rhodes). This requires the court "to assess whether the conduct
19 at issue is 'wanton.'" Coleman v. Wilson, 912 F.Supp. at 1321
20 (quoting Jordan v. Gardner, 986 F.2d 1521, 1527 (9th Cir. 1993))

21 The "baseline" mental state for "wantonness"
22 is "deliberate indifference." Id. As a
23 general rule, the deliberate indifference
standard applies where the claim is that

24 ¹² At the underlying trial the use of force claims centered on the use of
25 tasers and 37mm guns. See Coleman, 912 F.Supp. at 1321-1323. The focus of
26 the motion at bar is on the use of OC pepper spray and expandable batons
27 against class members. Plaintiffs' fundamental contention is the same: class
28 members suffer from serious mental illnesses which are exacerbated by use of
these weapons, use of the weapons causes serious harm, and defendants' current
policies, both in design and implementation, continue to demonstrate
deliberate indifference to their mental illnesses and the harms caused by use
of the weapons.

1 conditions of confinement cause unnecessary
2 suffering. *Id.* In contrast, the "malicious
3 and sadistic" standard applies to claims
4 arising out of the use of force to maintain
5 order. See id.

6 Coleman v. Wilson, 912 F.Supp. at 1321-22 (quoting Jordan, 986
7 F.2d at 1527-28). The Eighth Amendment violations at bar were
8 all predicated on findings that defendants' policies and
9 practices governing the use of force, punitive measures,
10 administrative segregation and segregated housing constituted
11 deliberate indifference to class members' serious mental
12 illnesses and the serious and substantial harms to members of the
13 plaintiff class caused by use of such measures. See Coleman v.
Wilson, 912 F.Supp. at 1319-1323.¹³

14 Defendants now oppose plaintiffs' motion concerning use of
15 force and disciplinary measures on the ground that there is no
16 pattern and practice of malicious and sadistic use of force
17 against mentally ill inmates. See Defs.' Opp'n to Motion Related
18 to Use of Force and Disciplinary Measures, filed July 24, 2103
19 (ECF No. 4704) at 8. To some extent, this aspect of defendants'
20 opposition may have been invited by some of the arguments
21 advanced by plaintiffs in their motion.¹⁴ Regardless, the

22 ¹³ The United States Court of Appeals for the Ninth Circuit has also applied
23 the deliberate indifference standard to constitutional claims that prison
24 staff used force, "including pepper spray, on prisoners instead of employing
25 appropriate mental health interventions" and that the prison's general
26 policies governing use of pepper spray were unconstitutional. Hallett v.
Morgan, 296 F.3d 732, 744-45, 747 (9th Cir. 2002). In Hallett, the court of
27 appeals upheld the constitutionality of the challenged actions and policies
28 based on findings that "use of pepper spray is carefully considered in advance
of its authorization, restricted and confined for limited purposes, and used
only very sparingly", staff was properly trained in its use and could not use
it without being subjected to it. Id. at 747.

¹⁴ Plaintiffs' motion for additional orders concerning use of force proceeds
from the contention that members of the plaintiff class "are regularly and

1 question of whether defendants' policies and practices prevent or
2 fail to prevent force applied maliciously and sadistically for
3 the very purpose of causing harm, see Whitley v. Albers, 475 U.S.
4 312, 320 (1986), is not before this court.¹⁵

5 First, application of that standard to the claims at bar was
6 rejected by the court in 1995. While a different claim or
7 changed circumstance might justify application of that standard,
8 that appears not to be the case here. Accordingly, the law of
9 the case doctrine applies to the instant motion. See, e.g.
10 Arizona v. California, 460 U.S. 605, 618 (1983).

11 Second, as the court discussed in its order denying
12 defendants' motion to terminate this action, once an Eighth
13 Amendment violation is found and injunctive relief ordered, the
14 focus shifts to remediation of the serious deprivations that
15 formed the objective component of the identified Eighth Amendment
16 violation. See Coleman v. Brown, 938 F.Supp.2d at 988.

17 Remediation can be accomplished by compliance with targeted
18 orders for relief or by establishing that the "violation has been

19
20 routinely subjected to unreasonable, unnecessary, and *excessive* uses of force
21 by correctional officers in California prisons" and that "[t]he State's
22 persistent use of unreasonable force against CDCR prisoners with mental
23 illness causes grave harm to the *Coleman* class." Pls. Mot. for Enforcement of
24 Court Orders and Affirmative Relief Related to Use of Force and Disciplinary
Measures, filed May 29, 2013 (ECF No. 4638) at 10-11 (emphasis added).
Plaintiffs also contend, inter alia, that defendants' policies and practices
governing use of force are inadequate under every single criteria set forth by
defendants' use of force expert's criteria for adequate systemic
administration of force in a correctional setting. Id. at 11.

25 ¹⁵ Indeed, in the 1995 order on the merits of plaintiffs' claims the court
26 specifically recognized that "[a]pplication of the deliberate indifference
27 standard to this conditions of confinement case in no way precludes
28 application of the malicious and sadistic standard in the context of suits
brought by mentally ill inmates for physical or mental injuries sustained by
virtue of the need to restore order in an emergency situation." Coleman v.
Wilson, 912 F.Supp. at 1323 n.60.

1 remedied in another way." Id. To the extent the subjective
2 component of an Eighth Amendment violation remains a relevant
3 inquiry, it is coextensive with proof of ongoing objectively
4 unconstitutional conditions. Id. at 989.

5 Defendants also argue that an assessment of whether
6 defendants are subjectively deliberate indifferent should include
7 examination of whether the conduct or regulations at issue are
8 "without penological justification" and that the factors outlined
9 in Turner v. Safley, 482 U.S. 78 (1987) "may be instructive in
10 evaluating whether regulations challenged under the Eighth
11 Amendment have a legitimate penological purpose." Defendants'
12 Post-Evidentiary Hearing Brief, filed January 21, 2014 (ECF No.
13 4988) at 7. This argument misses the mark.

14 Violations of the Eighth Amendment are not excused by an
15 asserted "reasonable relationship" to a legitimate penological
16 goal. See Johnson v. California, 543 U.S. 499, 511 (2005); see
17 also Jordan v. Gardner, 986 F.2d 1521, 1530 (9th Cir. 1993) (en
18 banc). Turner applies where the constitutional right at issue is
19 "one which is enjoyed by all persons, but the exercise of which
20 may necessarily be limited due to the unique circumstances of
21 imprisonment. . . . Eight Amendment rights do not conflict with
22 incarceration; rather, they limit the hardships which may be
23 inflicted upon the incarcerated as 'punishment.'" Jordan, 986
24 F.2d at 1530 (citing Spain v. Procunier, 600 F.2d 189, 193-94 (9th
25 Cir. 1979)). "[T]he integrity of the criminal justice system
26 depends on full compliance with the Eighth Amendment." Johnson,
27 543 U.S. at 511.

28 ////

1 Whatever rights one may lose at the prison
2 gates, cf. Jones v. North Carolina Prisoners
3 Union, 433 U.S. 119, 97 S.Ct. 2532, 53
4 L.Ed.2d 629 (1977) (prisoners have no right
5 to unionize), the full protections of the
6 eighth amendment most certainly remain in
7 force. **The whole point of the amendment is to**
8 **protect persons convicted of crimes. Eighth**
9 **amendment protections are not forfeited by**
10 **one's prior acts.** Mechanical deference to the
11 findings of state prison officials in the
12 context of the eighth amendment would reduce
13 that provision to a nullity in precisely the
14 context where it is most necessary. **The**
15 **ultimate duty of the federal court to order**
16 **that conditions of state confinement be**
17 **altered where necessary to eliminate cruel**
18 **and unusual punishments is well established.**

19 Spain v. Proconier, 600 F.2d at 193-94 (emphasis added).

20 "The existence of a legitimate penological justification
21 has, however, been used in considering whether adverse treatment
22 is sufficiently gratuitous to constitute punishment for Eighth
23 Amendment purposes." Grenning v. Miller-Stout, 739 F.3d 1235,
24 1240 (9th Cir. 2014) (citing Rhodes v. Chapman, 452 U.S. 337, 346
25 (1981))(in turn quoting Gregg v. Georgia, 428 U.S. 158, 183
26 (1976)). Thus, the presence of a legitimate penological
27 justification for conditions of confinement challenged under the
28 Eighth Amendment may be considered in determining whether the
 challenged condition constitutes punishment prohibited by the
 Eighth Amendment. See Grenning, 739 F.3d at 1240 (discussing
 Chappell v. Mandeville, 706 F.3d 1052, 1058 (9th Cir. 2013) and
 Keenan v. Hall, 83 F.3d 1083, 1090 (9th Cir. 1996)). Nonetheless,
 in this case such consideration is necessarily delimited by the
 necessity of consideration of class members' mental status. The
 interrelationship of these two legitimate considerations is the
 crux of the problem considered herein.

1 In sum, failure to properly consider the mental state of
2 class members requires the court to act. If defendants fail to
3 meet their Eighth Amendment obligations, this court must enforce
4 compliance. See Brown v. Plata, 131 S.Ct. at 1928 (citing Hutto
5 v. Finney, 437 U.S. 678, 687, n. 9, 98 S.Ct. 2565, 57 L.Ed.2d 522
6 (1978)). "Courts may not allow constitutional violations to
7 continue simply because a remedy would involve intrusion into the
8 realm of prison administration." Brown v. Plata, 131 S.Ct. at
9 1928-29.

10 Finally, defendants assert that plaintiffs have the burden
11 of proof on this motion. Plaintiffs do not dispute this
12 assertion.

13 Given all the above, the court now turns to the motions at
14 bar.

15 I. Use of Force/Disciplinary Measures

16 A. Use of Force

17 The Eighth Amendment violation with respect to use of force
18 (hereafter "use of force" or "UOF") arises from policies and
19 practices that permit use of force against seriously mentally ill
20 prisoners without regard to (1) whether their behavior was caused
21 by mental illness and (2) the substantial and known psychiatric
22 harm and risks thereof caused by such applications of force. See
23 Coleman v. Wilson, 912 F.Supp. at 1322. The record showed then,
24 and still shows, that force can be and is used against seriously
25 mentally ill inmates in circumstances that permit reflection
26 prior to its application. See id., 912 F.Supp. at 1321-23; see
27 also Ex. A to Declaration of Michael D. Stainer, filed March 12,
28

1 2014 (ECF No. 5111-1).¹⁶ Remediation of the identified Eighth
2 Amendment violation concerning use of force against California's
3 seriously mentally ill inmates requires at least three things:
4 (1) development of policies and procedures which provide
5 sufficient guidance and clarity to avoid the identified harm; (2)
6 adequate implementation of those policies and practices,
7 including but not limited to appropriate training of all staff;
8 and (3) adequate enforcement of those policies and procedures.
9 Whether the constitutional violation remains is a different
10 question from the nature of further relief, if any, that may be
11 required if the constitutional violation is ongoing.¹⁷

12 In addition to the legal principles set forth supra, two
13 other principles guide the court's consideration of the issues at
14 bar. First, there appears to be general agreement among the
15 appellate courts that have considered the question that "'it is a
16 violation of the Eighth Amendment for prison officials to use
17 mace, tear gas or other chemical agents in quantities greater
18 than necessary. . . .'" Williams v. Benjamin, 77 F.3d 756, 763
19 (4th Cir. 1996) (quoting Soto v. Dickey, 744 F.2d 1260, 1270 (7th
20 Cir. 1984)). "This is because, even when properly used, such
21 weapons 'possess inherently dangerous characteristics capable of
22 causing serious and perhaps irreparable injury to the victim.'" "

23
24 ¹⁶ Defendants have filed four declarations from Mr. Stainer, the Director of
25 CDCR's Division of Adult Institutions in connection with these proceedings.
Each will be referred to by its ECF number.

26 ¹⁷ Put another way, the absence of a specific policy or practice requested by
27 plaintiffs does not necessarily demonstrate that the constitutional violation
28 is ongoing. On the other hand, one or more of the remedial orders requested
by plaintiffs may be required if the constitutional violation has not yet been
adequately remedied.

1 Williams, 77 F.3d at 763 (quoting Slakan v. Porter, 737 F.2d 368,
2 372 (4th Cir.1984), *cert. denied*, 470 U.S. 1035, 105 S.Ct. 1413,
3 84 L.Ed.2d 796 (1985)). Second, at least one appellate court has
4 found that the Eighth Amendment is violated by use of pepper
5 spray on a mentally ill inmate who, because of mental illness, is
6 unable to comply with directives from prison officials and
7 nonetheless is subjected to pepper spray. See Thomas v. Bryant,
8 614 F.3d 1288, 1310-11 (11th Cir. 2010) ("repeated non-spontaneous
9 use of chemical agents" on mentally ill inmate "constituted an
10 extreme deprivation sufficient to satisfy the objective prong" of
11 Eighth Amendment deliberate indifference claim where inmate's
12 "well-documented history of mental illness and psychotic episodes
13 rendered him unable to comply at the times he was sprayed such
14 that the policy was 'unnecessary' and 'without penological
15 justification in his specific case.")¹⁸

16 Taken together, the foregoing two lines of authority suggest
17 that the Eighth Amendment requires clear and adequate constraints
18 on the amount, if any, of pepper spray that may be used on
19 mentally ill inmates generally and more particularly when such
20 inmates are confined in a space such as a cell or a holding cage,
21 as well as significant constraints, if not a total ban, on the
22 use of pepper spray on mentally ill inmates who because of their
23 mental illness are unable to comply with official directives.

24
25 _____
26 ¹⁸ The Williams court applied the Whitley standard to the subjective component
27 of the Eighth Amendment claim before that court, see Williams, 77 F.3d at 762,
28 while the Thomas court applied the deliberate indifference standard. See
Thomas, 614 F.3d at 1304-05. The relevance of both decisions to the analysis
at bar are their holdings concerning the objective component of an Eighth
Amendment violation arising from the use of pepper spray.

1 The court now turns to the merits of plaintiffs' motion with
2 respect to use of force.

3 Defendants' written UOF policy is found in Title 15 of the
4 California Code of Regulations at §§ 3268-3268.3 and CDCR's
5 Department Operations Manual Chapter 5, Article 2-Use of Force
6 (DOM). Defs. Ex. J, Stainer Decl., filed July 24, 2013 (ECF No.
7 4708) at ¶ 5. The current provisions of Title 15 were revised in
8 August 2010 and implemented thereafter. Amended Declaration of
9 John R. Day, filed August 26, 2013 (ECF No. 4772-1) at ¶ 4.¹⁹

10 DOM provisions governing UOF have been revised twice since
11 the conclusion of the evidentiary hearing.²⁰ See Stainer Decls.
12 (ECF Nos. 4987, 5078, 5111-1). While defendants dispute
13 plaintiffs' characterization of the uses of force depicted on six
14 videotapes shown at the hearing, several of the DOM revisions
15 appear directly aimed at preventing such uses of force. At the
16 hearing, Michael Stainer, the Director of CDCR's Division of

17 ¹⁹ The current regulations were promulgated and implemented pursuant to a
18 review process required by another federal class action lawsuit, Madrid v.
19 Gomez, No. 90-3094 TEH (N.D.Cal.). Defendants contend, inter alia, that
20 plaintiffs' motion is, in part, an improper effort to seek reconsideration of
21 the Madrid court's order. See Defs.' Opp. To Motion Related to Use of Force
and Disciplinary Measures, filed July 24, 2013 (ECF No. 4704) at 33 n.6. The
motion at bar is focused on whether defendants' use of force policies and
practices are sufficient to remedy the constitutional violation identified by
this court in its 1995 order. That issue was not before the Madrid court.

22 ²⁰ One of plaintiffs' objections to the revised DOM provisions is that the new
23 procedures are only in the DOM and not in Title 15. Plaintiffs contend that
24 state law requires "CDCR rules of general (statewide) application to prisoners
25 be formally promulgated and added to Title 15" and they question whether DOM
26 provisions only, without alterations to Title 15, are sufficient for a durable
27 remedy. See Pls. Brf. on Defs. Proposed Revisions to Use of Force Policy,
28 filed February 12, 2014 (ECF No. 5065) at 11 n.3. Although this question is
not before the court, it appears that the state law requirement that agency
rules of general application be promulgated in accordance with the
requirements of California's Administrative Procedures Act does not mean that
all CDCR rules of general application must be added by amendment to Title 15.
See Morales v. California Department of Corrections and Rehabilitation, 168
Cal.App.4th 729, 735-36 (2008).

1 Adult Institutions testified that none of the uses of force
2 depicted in the six videotapes constituted excessive force "as
3 defined by [CDCR] policy." Reporter's Transcript Re: Evidentiary
4 Hearing (RT) at 911:23-912:1. He further testified that in his
5 view while none of the videos depicted excessive force "there
6 might have been better ways of doing things, but that is tactics.
7 . . . [W]e plan on addressing that with our policy revisions
8 which provide additional guidance." RT at 912:2-7.

9 The court accepts Mr. Stainer's testimony that none of the
10 force depicted on the six videotapes was excessive under then-
11 existing guidelines in CDCR policy. In combination with the
12 events depicted on the videotapes, that testimony is perhaps the
13 best evidence that the constitutional violation with respect to
14 use of force on seriously mentally ill inmates has not yet been
15 remedied.

16 The court cannot credit Mr. Stainer's testimony that what
17 was depicted on the six videos shown at the hearing depicted
18 acceptable "tactics." Most of the videos were horrific; each was
19 illustrative of one or more of the objective components of the
20 underlying constitutional violation found in the court's 1995
21 order. Defendants' expert, Steve Martin, testified that the fact
22 that the events depicted on the videotapes "occurred is bad
23 enough, and, hopefully, they're as few in number, as I believe
24 them to be, . . . But what is so bothersome and disturbing is
25 that no - this sophisticated IERC (Institutional Executive Review
26 Committee) with all these ranking administrators experienced as
27 Director Stainer is, could read these reports and not at least
28 question the amount of spray or the tactics used. . . ." RT at

1 1903:9-17. Mr. Martin testified that without such questioning,
2 neither review nor corrective action occurs and the absence of
3 corrective action is "the path to institutionalizing a culture
4 that lends itself to harm, to institutionalized harm." RT at
5 1903:22-1905:18.

6 Even if the incidents on the videotapes were, as Mr. Martin
7 testified, "isolated aberrations, anomalies, outliers" that "do
8 not . . . represent the vast majority of incidents" he reviewed,
9 RT at 1795:3-8, Mr. Stainer's testimony establishes that all of
10 the incidents fell within the purview of defendants' UOF policy.
11 Furthermore, both Mr. Martin and Mr. Stainer testified that none
12 resulted in further review beyond the IERC or, except for some
13 "trainings", corrective action independent of these proceedings.
14 RT at 954:6-17 (Stainer); RT at 1901:16-1903:12 (Martin). This,
15 in itself, demonstrates the constitutional inadequacy of either
16 the regulations or the review process.

17 In addition, plaintiffs' evidence suggests that force is
18 used against mentally ill inmates at a rate greatly
19 disproportionate to their presence in the overall inmate
20 population. Plaintiffs' expert, Eldon Vail, reported that twelve
21 of California's prisons reported use of force incidents against
22 mentally ill inmates at a rate more than double their
23 representation in the prison population, three prisons reported
24 use of force incidents against mentally ill inmates at a rate
25 triple their representation in the prison population, and in
26 several, 87 to 94% of the use of force incidents were against
27 mentally ill inmates. Expert Declaration of Eldon Vail, filed
28 May 29, 2013 (ECF No. 4638-1) at ¶¶ 9-11. As Mr. Vail opined,

1 this is evidence, at least, of a systemic failure to understand
2 "what a mentally ill person might be experiencing before or
3 during a use of force incident, or of how mental illness may make
4 it difficult for an inmate to immediately conform his or her
5 behavior in response to an order." Id. at ¶ 12.

6 Mr. Stainer also testified to the need for revisions to the
7 policy to guide staff in making "appropriate" UOF decisions and
8 that the UOF guidelines would be "tighten[ed] down . . . quite a
9 bit." RT at 826:16-25. The policy revisions are a critical step
10 forward and, if fully implemented and enforced, will bring the
11 state closer to remediation of the identified Eighth Amendment
12 violation. Without more, however, seriously mentally ill inmates
13 in California's prisons will remain subject to uses of force by
14 custody staff armed with OC pepper spray and expandable batons
15 "without regard to the impact of those weapons on their
16 psychiatric condition." Coleman v. Wilson, 912 F.Supp. at 1323.

17 Title 15 and the DOM divide use of force incidents into two
18 categories: immediate and controlled. "Immediate use of force"
19 is "[t]he force used to respond without delay to a situation or
20 circumstance that constitutes an imminent threat to the security
21 or the safety of persons." 15 C.C.R. § 3628(a)(4); see also DOM
22 § 51020.4. "Controlled use of force" is defined as "[t]he force
23 used in an institution/facility setting when an inmate's presence
24 or conduct poses a threat to safety or security and the inmate is
25 located in an area that can be controlled or isolated." 15
26 C.C.R. § 3268(a)(5); see also DOM § 51020.4. The DOM provisions
27 expand on the regulations by providing that immediate uses of
28 force may be used by employees without prior authorization, while

1 controlled uses of force require authorization and presence of
2 specific personnel. See DOM § 51020.4.

3 The differences between these two categories are significant
4 to the remedy in this case. "Immediate" uses of force are
5 applied without the reflection and intervention that can avoid or
6 prevent the serious harm suffered by members of the plaintiff
7 class when force is used. See RT at 1967:6-12. Thus, the
8 definition of immediate use of force must be adequate to exclude
9 uses of force in circumstances where "time, distance and delay"
10 can be taken before force is used. See RT at 1966:17-1968:4
11 (testimony of Steven Martin that if an officer could have "waited
12 and taken time, distance and delay" instead of immediately using
13 force "the force obviously was not necessary.")

14 Plaintiffs' expert, Eldon Vail, testified that the
15 appropriate criteria for immediate use of force is already in
16 California's use of force policy, which on its face requires an
17 "imminent threat" to justify an immediate use of force. RT at
18 436:7-8, 436:24-473:3; see also RT at 1935:11-14 (testimony of
19 defense expert Steven Martin that "immediate use of force is
20 supposed to be used only if there's some imminent harm that needs
21 to be stopped.") Mr. Vail's principal critique of the written
22 policy was a then-existing exception in § 51020.11.2 of the DOM
23 which allowed immediate use of force against inmates who refused
24 to relinquish their food ports. See Ex. A to Stainer Decl. (ECF
25 No. 4708-1) at 5. Mr. Vail testified that was a "really huge
26 flaw" in defendants' use of force policy. RT at 553:5-554:4.
27 Newly amended § 51020.11.2 has removed that exception and no
28 longer authorizes immediate use of force when an inmate refuses

1 to relinquish a food port. Instead, "[i]n the event the inmate
2 does not relinquish control of the food port, the officer shall
3 back away from the cell and contact and advise the custody
4 supervisor of the situation. Controlled force will be initiated
5 while custody staff continue to monitor the inmate." Ex. A to
6 Stainer Decl. (ECF No. 5111-1) at 9.

7 Mr. Stainer averred that the revisions to the DOM concerning
8 the food ports were made "to emphasize CDCR's policy that the
9 immediate use of pepper spray is only authorized in response to
10 an emergent or imminent threat." Stainer Decl. (ECF No. 5111-1)
11 at ¶ 3. As revised, defendants' current written policy
12 concerning immediate use of force appears to be adequate on its
13 face. However, testimony at the hearing and the nature of the
14 revisions to the DOM highlight both the importance of adequate
15 training in the revisions to the policy and the necessity of
16 monitoring immediate uses of force to ensure that they are
17 limited to "imminent threats."

18 The record before the court suggests that for an extended
19 period of time CDCR staff have been working with a broad
20 definition of "imminent threat." In addition to the
21 food/security port exception, there was evidence at the hearing
22 that immediate use of force was authorized by policy when, even
23 without an imminent threat, inmates kicked their cell doors. RT
24 at 436:5-9. Defendants' expert Steve Martin testified that
25 "[t]here are substantially more use of force incidents [in CDCR]
26 that are immediate and not controlled." RT at 1966:9-13. He
27 testified concerning a high percentage of immediate use of force
28 incidents at Pelican Bay in the period from January to October

1 2012. RT at 1935:18-1937:3. He reviewed 180 incidents of use of
2 force, 174 of which had been characterized as "'immediate
3 applications of force.'" RT at 1935:15-1936:9. In reviewing
4 those incidents, he "identified fairly quickly a number of
5 incidents" categorized as "immediate" uses of force that evidence
6 showed "could have been managed through 'controlled force.'" RT
7 at 1936:17-19. Those incidents evidenced unnecessary uses of
8 force. See RT at 1967:17-1968:4 ("immediate" use of force where
9 "controlled use of force" was possible demonstrates unnecessary
10 use of force "because if you could have waited and taken time,
11 distance and delay, the force obviously was not necessary.")²¹

12 The foregoing suggests that heretofore immediate use of
13 force has been used with far greater frequency than authorized by
14 the written policy testified to by Mr. Stainer. It will be
15 necessary going forward for defendants to provide adequate staff
16 training and to closely monitor all UOF incidents, particularly
17 those classified as "immediate" uses of force, to ensure that
18 these policy revisions are actually effected.

19 The issues with respect to controlled use of force are
20 different. They concern (1) whether defendants obtain the
21 relevant information concerning an inmate's mental illness prior
22

23 ²¹ Subsequently, in response to a question about whether there is a "pattern
24 and practice of systemic use of force at Pelican Bay," Mr. Martin testified
25 that "probably, if memory serves . . . , I found three to five cases out of the
26 immediate category case that I believed could have been calculated
27 applications of force." RT at 1968:10-15. Given Mr. Martin's other testimony
28 about that the "very high percentage" of immediate use of force incidents at
Pelican Bay, and the fact that he brought this information to the attention of
the current Secretary of Corrections, who was with him at Pelican Bay, the
court places substantial weight on Mr. Martin's testimony that the
disproportionate number of immediate use of force incidents at Pelican Bay was
not de minimis and was cause for concern.

1 to application of force; and (2) what is done with the
2 information that is obtained.

3 Section 51020.4 of the DOM defines controlled use of force
4 as

5 the force used in an institution/facility
6 setting, when an inmate's presence or conduct
7 poses a threat to safety or security and the
8 inmate is located in an area that can be
9 controlled or isolated. These situations do
10 not normally involve the immediate threat to
11 loss of life or immediate threat to
12 institution security. All controlled use of
13 force situations require the authorization
14 and the presence of a First or Second Level
15 Manager, or Administrative Officer of the Day
16 (AOD) during non-business hours. Staff shall
17 make every effort to identify disabilities,
18 to include mental health concerns, and note
19 any accommodations that may need to be
20 considered.

21 Ex. A to Stainer Decl. (ECF No. 5111-1) at 6. In addition to the
22 definitional provision, several other DOM provisions are relevant
23 to the issues before the court.

24 The use of force options available to CDCR officers are set
25 forth in DOM § 51020.5. That section provides:

26 Use of Force options do not have to be
27 utilized in any particular sequence, but
28 should be the force option staff reasonably
believes is sufficient. Verbal persuasion or
orders should be issued prior to resorting to
force and are required to be provided before
controlled force is used. . . . Use of force
options include but are not limited to:

- 29 • Chemical agents
- 30 • Hand-held batons

- 1 • Physical strength and holds. A choke
2 hold or any other physical restraint
3 which prevents the person from
4 swallowing or breathing shall not be
5 used unless the use of deadly force
6 would be authorized.
- 7 • Less-lethal weapons. A less lethal
8 weapon is any weapon that is not likely
9 to cause death. A 37mm or 40mm launcher
10 and any other weapon used to fire less-
11 lethal projectiles is a less lethal
12 weapon.
- 13 • Lethal weapons. A firearm is a lethal
14 weapon because it is used to fire lethal
15 projectiles. A lethal weapon is any
16 weapon that is likely to result in
17 death.

18 Ex. A to Stainer Decl. (ECF No. 4708-1), at 3.

19 DOM section 51020.12 sets forth the general requirements for
20 controlled use of force. Ex. A to Stainer Decl. (ECF No. 5111-1)
21 at 9-10. It requires that mental health concerns "be taken into
22 account prior to any controlled use of force." Id. at 10. It
23 also requires that all controlled uses of force

24 be preceded by a cool down period of
25 reasonable length to allow the inmate an
26 opportunity to comply with staff orders.
27 During the cool down period, clinical
28 intervention by a licensed practitioner shall
 be attempted, regardless of the mental health
 status of the inmate. The length of the cool
 down period can vary depending upon the
 circumstances. In situations involving
 participants in the mental health program,
 Incident Commanders, on-site Managers, and
 licensed health care practitioner shall
 discuss concerns that may affect the length
 of the cool down period.

 The First or Second Level Manager, or the
 AOD, shall determine the length of the cool

1 down period and communicate this to the
2 Incident Commander. . . .

3 A controlled use of force shall not be
4 accomplished without the presence of a
5 licensed health care practitioner.

6 Id. at 10.

7 Controlled uses of force must be video recorded. See id.,
8 DOM § 51020.12.1. DOM § 51020.12.1 vests the Incident Commander
9 with the responsibility for "determining what force options shall
10 be used and the order in which they will be applied." Ex. A to
11 Stainer Decl. (ECF No. 5111-1) at 11. The Incident Commander is
12 required to "consider", inter alia, the inmate's "apparent mental
13 state" when determining those force options. Id. The First or
14 Second Level Manager/AOD must "identify themselves on camera and
15 confirm they are authorizing the controlled use of force,
16 including the force options as stated by the Incident Commander."
17 Id. The attempted clinical intervention, which is described as
18 "efforts made to verbally counsel the inmate and persuade the
19 inmate to voluntarily come out of the area without force" is to
20 be recounted on camera by the licensed health care practitioner
21 who attempted the intervention; the actual intervention is not
22 recorded. Id.

23 DOM § 51020.12.2 contains specific provisions for controlled
24 uses of force involving seriously mentally inmates, as follows:

25 When inmates are housed in departmental
26 hospitals, infirmaries, Correctional
27 Treatment Centers (CTC), Enhanced Outpatient
28 Program Units (EOP), or Psychiatric Services
Units (PSU), or has an EOP level of care
designation, or any inmate who is acting in a
bizarre, unusual, uncharacteristic manner,

1 the controlled use of force shall occur as
2 follows:

- 3 • A licensed health care practitioner
4 designated by the Chief Executive
5 Officer (CEO) shall be consulted prior
6 to the use of chemical agents (see
7 Chemical Agents Restrictions).
- 8 • Clinical intervention by a licensed
9 practitioner shall be attempted.
10 Clinical intervention shall also precede
11 the extraction of any inmate who is
12 being extracted upon the written order
13 of a medical doctor, psychiatrist, or
14 psychologist to facilitate a change in
15 housing for treatment purposes.
- 16 • The clinician shall attempt to verbally
17 counsel the inmate and persuade the
18 inmate to voluntarily come out of the
19 area without force. These efforts shall
20 continue during the cool down period.
- 21 • Whenever circumstances permit, the
22 clinician shall be a mental health
23 provider; i.e., Psychiatric Technician,
24 Licensed Clinical Social Worker,
25 Psychologist, or Psychiatrist.

18 Id. at 12. Former DOM § 51020.12.2 was substantially similar;
19 the amendment adds language extending its provisions to "any
20 inmate who is acting in a bizarre, unusual, uncharacteristic
21 manner." See Ex. A to Stainer Decl. (ECF No. 5078-1) at 8. The
22 provisions of DOM § 51020.12.2 are "additional safeguards and
23 requirements" to be followed for controlled UOF on mentally ill
24 inmates; the other provisions of the UOF policy also continue to
25 apply. RT at 806:17-807:24.

26 The amendments to the DOM change in significant ways the
27 amount of pepper spray authorized in controlled UOF incidents.
28 Amended DOM § 51020.15 lists the specific types of pepper spray

1 authorized for use, the number of applications, and the duration
2 of each application. Ex. A to Stainer Decl. (ECF No. 5111-1) at
3 14-15. Staff must wait a minimum of three minutes after an
4 application of pepper spray before applying another application,
5 and the Incident Commander and Response Supervisor must assess
6 the effectiveness of each application. Id. at 15. No more than
7 four applications of pepper spray are permitted, except that
8 “[i]n exigent or unusual circumstances it may be necessary to
9 exceed the 4 allowed applications.” Id. Additional applications
10 must be specifically authorized by the First or Second Level
11 Manager/AOD, and each must be explained on the video recording.
12 Id. The Incident Commander and the Response Supervisor are
13 required to consult with each other and “consider the totality of
14 circumstances to determine the best course of action.” Id.
15 Additional consultation is required for mentally ill inmates:

16 If the inmate is a participant in the mental
17 health program and has not responded to staff
18 for an extended period of time, including
19 during the cool down period, laying
20 motionless on bunk or floor, sitting on edge
21 of bunk head down, no eye contact, and it
22 appears that the inmate does not present an
23 imminent physical threat, additional
24 consideration and evaluation should occur
25 before the use of chemical agents is
26 authorized. This additional evaluation should
27 include input from the assigned housing unit
28 staff and licensed health care practitioners
regarding the inmates recent behavior, file
review for recent history of violence,
previous cell extractions, etc. The rationale
shall be explained on camera by the on-site
Manager.

27 Id.

1 Amended DOM § 51020.15.1 limits the OC products that can be
2 used in "one/two person celled housing, single person expanded
3 metal holding cells, showers, or any other small space." Ex. A
4 to Stainer Decl. (ECF No. 5111-1) at 16. In addition, this
5 section contains specific language governing use of pepper spray
6 in controlled use of force incidents involving mentally ill
7 inmates at the EOP level of care or higher:

8 For controlled use of force incidents
9 involving inmates housed in departmental
10 hospitals, infirmaries, CTCs, EOPs, and PSUs,
11 or who have an EOP level of care designation,
12 a licensed health care employee designated by
13 the Chief Executive Officer (CEO) shall be
14 consulted prior to the use of chemical
15 agents:

- 16 • The licensed health care practitioners
17 shall document his/her recommendation
18 regarding whether or not there is a
19 contraindication for the use of chemical
20 agents on a Medical Chrono (CDC 128C).
21 This document shall be included in the
22 incident package.
- 23 • If, during the consultation, the
24 licensed health care practitioners
25 express concerns regarding the use of
26 chemical agents, the First/Second Level
27 Manager authorizing the use of force and
28 licensed health care practitioners shall
discuss the matter to determine the best
course of action. The licensed health
care practitioner shall consider in
providing their consultation, the
potential for injury during the use of
physical force, as well as the medical
implication of exposure to chemical
agents. After the consultation, the
decision to use chemical agents or
physical force shall rest with the First
or Second Level Manager authorizing the
use of force.

- 1 • If a decision is made to use chemical
2 agents in spite of any
3 contraindications, the decision shall be
4 articulated and written justification
5 provided. The written justification must
6 include specific determinations and
7 considerations to justify the need to
8 over-ride the contraindications, beyond
the statement of safety to staff or
security of the institution.
Consideration shall be given to the
inmate's mental health status and
current mental state.

9 Id. at 16. Unlike amended DOM § 51020.12.2, the provisions of
10 this section do not extend to "any inmate who is acting in a
11 bizarre, unusual, uncharacteristic manner." See id.

12 In addition, the amended provisions stand in
13 contradistinction to DOM § 51020.14.1, which prohibits the use of
14 less lethal weapons on seriously mentally ill inmates "housed in
15 departmental hospitals, infirmaries, or other CDCR medical
16 facilities, or who have an EOP level of care designation" in
17 controlled use of force incidents unless authorized by the
18 Institution Head, Chief Deputy Warden, or AOD and
19 "[c]ircumstances [are] serious in nature calling for extreme
20 measures to protect staff or inmates, i.e., the inmate may be
21 armed with a deadly weapon." Ex. A to Stainer Decl. (ECF No.
22 4708-1) at 6.

23 Once again, the DOM revisions concerning controlled use of
24 force evidence an effort to heighten consideration of the impact
25 of UOF measures on mentally ill inmates. Nonetheless, it appears
26 to the court that the measures do not meet Eighth Amendment
27 standards.

28 // //

1 First, defendants' policy concerning controlled use of force
2 on the seriously mentally ill inmate fails to require
3 consideration of the inmate's ability to conform his or her
4 conduct to the order or directive giving rise to the use of
5 force. Defendants' expert, Steve Martin, testified that "without
6 qualification" the inmate's ability to comply with orders must be
7 considered if policy permits use of force for disobedience with
8 an order, and that it is not appropriate to use of pepper spray
9 to obtain compliance with orders a seriously mentally ill inmate
10 cannot and does not understand. RT at 1871:14-25, 1872:6-24.
11 This factor must be considered. Cf. Thomas v. Bryant, 614 F.3d
12 at 1311.

13 Second, the policy revisions do not vest mental health
14 clinicians with sufficient authority in decisions concerning use
15 of force. In every instance, final decisionmaking responsibility
16 and authority for all uses of force rest with custodial staff.
17 While consultation with mental health staff is required, custody
18 staff is authorized to override clinical judgments without
19 sufficient guidance about which clinical judgments, if any, may
20 be overridden and under what circumstances. Cf. Gates v. Gomez,
21 60 F.3d 525, 533 (9th Cir. 1995) (interpreting consent decree;
22 "since CMF is a prison health care facility, no custody decision
23 should be made that is medically contraindicated.")

24 Mr. Stainer is to be commended for the steps he has taken to
25 "tighten down" the use of force guidelines for use of force
26 against members of the plaintiff class. The fact that additional
27 work remains does not take away from the court's recognition that
28 Mr. Stainer appears to have taken his responsibility in this area

1 seriously. The court anticipates that with continued diligence,
2 full remediation can be achieved.

3 Defendants must complete the work begun by Mr. Stainer so
4 that their policies and practices relative to use of force on
5 seriously mentally ill inmates include (1) consideration of the
6 role of mental illness in an inmate's ability to comply with
7 staff directives; (2) adequate guidance concerning the role of
8 mental health clinical judgments in use of force on class members
9 and when, if ever, those judgments may be overridden by custody
10 staff; and (3) alternatives to use of force on seriously mentally
11 ill inmates where there is no imminent threat to life and force
12 is contraindicated by the inmate-patient's mental health.²²

13 Plaintiffs also challenge the use of the expandable baton on
14 class members. Both plaintiffs' expert, Mr. Vail, and
15 defendants' expert, Mr. Martin, agreed that the expandable baton
16 is an impact weapon whose primary function is self-defense. See
17 Vail Decl. (ECF No. 4638-1) at ¶¶ 31-32; Ex. 1 to Declaration of
18 Lori E. Rifkin (ECF No. 4638-8) at 8. At the time of the
19 hearing, the court heard testimony that the expandable baton is
20 worn by California correctional officers as "standard issue" on
21 their duty belts. RT at 88:18-23 (Vail); RT at 1811:5-9.
22 Defendants' expert testified that there is not "sufficient
23 guidance in either the regs or training materials" concerning the
24 use of these batons. RT at 1812:17-19.

25 ////

26 _____
27 ²² It appears to the court that the seeds of the solution to at least some of
28 the foregoing are in the Program Guide and those DOM provisions that provide
specific restrictions for use of force on inmate-patients at EOP and higher
levels of care. See, e.g., DOM § 51020.14.1.

1 Although it is not clear, it appears that defendants'
2 revised use of force policy may have changed the practice of
3 standard issuance of expandable batons. See Ex. A to Stainer
4 Decl. (ECF No. 5111-1) at 12 (DOM § 51020.12.3 including
5 expandable baton in list of extraction equipment to "be issued"
6 if extraction is necessary). Defendants will be directed to
7 clarify this.

8 Defendants shall work under the guidance of the Special
9 Master to make the additional revisions to the use of force
10 policy and the clarifications and guidance concerning the use of
11 the expandable baton required by this order. The Special Master,
12 shall provide expertise where necessary, and shall ensure that
13 plaintiffs are provided notice and an opportunity for input as
14 appropriate. The revisions shall be completed within sixty days.

15 B. Disciplinary Measures

16 Plaintiffs also contend that further remedial orders are
17 required to remedy the identified constitutional violation in
18 defendants' use of disciplinary measures against mentally ill
19 inmates. The constitutional violation was based in a finding
20 that seriously mentally ill inmates "'who act out are typically
21 treated with punitive measure without regard to their mental
22 status.'" Coleman v. Wilson, 912 F.Supp. at 1320. The court
23 found "substantial evidence in the record of seriously mentally
24 ill inmates being treated with punitive measure by the custody
25 staff to control the inmates' behavior without regard to the
26 cause of the behavior, the efficacy of such measures, or the
27 impact of those measures on the inmates' mental illnesses." Id.

28 In 1995, the violation was attributed in substantial part to

1 inadequate training of custody staff in the signs and symptoms of
2 mental illness. Id. During the remedial phase of this action,
3 defendants have developed a mental health assessment process for
4 prison disciplinary proceedings involving most seriously mentally
5 ill inmates. By September 2001, defendants had completed a final
6 draft of a policy that required a mental health assessment of all
7 EOP and MHCB inmates charged with rules violations "to determine
8 if the behavior of the inmate resulting in the rule violation was
9 influenced by a mental disorder." Ex. 3 to Declaration of Jane
10 E. Kahn, filed May 29, 2013 (ECF No. 4640) at 34.

11 Formulation of policy for mental health assessment of CCCMS
12 inmates charged with rules violations has proceeded more slowly.
13 See Seventeenth Monitoring Report of the Special Master, Part B,
14 filed April 2, 2007 (ECF No. 2180-1) at 44-47; Twenty-Third Round
15 Monitoring Report of the Special Master, filed December 1, 2011
16 (ECF No. 4124) at 31-39. The relevant history is set forth in
17 the Special Master's Twenty-Third Round Monitoring Report. See
18 Twenty-Third Round Monitoring Report (ECF No. 4124) at 31-39; see
19 also Kahn Decl. (ECF No. 4640) at ¶¶ 19-20 (citing Twenty-Third
20 Round Monitoring Report).

21 In August 2007, defendants were ordered to develop and plan
22 "for identifying and developing changes necessary to broaden the
23 impact of the then-existing mental health assessment process in
24 CDCR prison disciplinary matters for 3CMS inmates." Twenty-Third
25 Round Monitoring Report (ECF No. 4124) at 31-32. Initially
26 defendants submitted a revised plan to the Special Master on May
27 1, 2008, with several representations, including completion of a
28 pilot by August 5, 2008, and a representation that by November 1,

1 2008 they would "develop an implementation plan that includes a
2 procedure for effective monitoring of the RVR process." Id. at
3 34. However, defendants submitted nothing further to the Special
4 Master for over three years after the May 2008 report. Id.

5 In June 2011, after repeated requests from the Special
6 Master, defendants produced a report on the pilot which showed
7 that key elements had never been implemented or piloted. Id. at
8 35-36. Moreover, the June 2011 report "concluded with a list of
9 five actions for statewide application that bore very little
10 resemblance to" the May 2008 plan and "signalled too much of a
11 retreat for the original assessment process of 1998, when a
12 mental health evaluation was required for every *Coleman* caseload
13 inmate who received an RVR." Id. The Special Master reported
14 that

15 [i]t appeared that defendants had lost sight
16 of the original identified problem and the
17 goal of the pilot to resolve that problem.
18 Given the limited character of what
19 defendants proposed as their plan,
20 appropriate use of the mental health
assessments in the disciplinary process for
3CMS inmates may well have ended up being
even more limited than it was before the plan
was ordered.

21 Id. at 38.

22 On May 10, 2011, defendants circulated a new field
23 memorandum directing completion of mental health assessments for
24 3CMS inmates charged with the most serious disciplinary
25 infractions. Id. Thereafter, the Special Master and the parties
26 had a "handful of meetings in September and October 2011" which
27 resulted in an agreement between the parties and approved by the
28 Special Master for a newly revised policy for mental health

1 assessments for CCCMS inmates charged with rules violations. Id.
2 at 38-39. In October 2011, defendants distributed a training
3 plan. Id. At the time of the writing of the Twenty-Third Round
4 Monitoring Report, the parties and the Special Master had agreed
5 "that the training portion of the plan will be updated with
6 regard to the definition and extent of the penalty-mitigation
7 envisioned by the plan," that "CDCR staff will verify that the
8 training is consistent with existing applicable Program Guide
9 provisions," and that implementation and operation of the plan
10 would "then be reviewed in the course of regular *Coleman*
11 monitoring activities." Id.

12 At the hearing, plaintiff's expert Eldon Vail testified that
13 CDCR's prison disciplinary process does not "systematically
14 take[] into account the mental illness of inmates in their
15 system, and the result is that inmates are often punished for
16 their mental illness." RT at 464:21-465:2. Mr. Vail's opinion
17 in this regard is based on, inter alia, review of "more than 268
18 RVR reports," all of defendants' expert's file for the
19 termination proceedings, and CDCR's RVR policies and procedures.
20 Expert Declaration of Eldon Vail in Support of Reply Brief, filed
21 August 23, 2013 (ECF No. 4766-2) at ¶ 2. Mr. Vail also testified
22 that although defendants have policies and procedures designed to
23 account for the role of mental illness in rules violations,
24 defendants do not capture sufficient "aggregate data" to assess
25 whether these policies and procedures are in fact working. RT at
26 465:3-12. He testified that during his review he "looked at lots
27 of examples, individual examples, granular examples" where they
28 were not working. RT at 465:13-15.

1 The testimony of defendant's expert Steve Martin in this
2 regard was similar. Mr. Martin testified that he reviewed over
3 400 rules violation reports issued to inmates who refused orders
4 to cuff up and were subsequently charged with obstructing or
5 disobeying a peace officer and, where they were completed, the
6 mental health assessment forms completed as part of the RVR
7 process. RT at 1943:1-1944:19. He found that sometimes
8 clinicians did a good job of explaining whether the inmate's
9 mental illness caused or contributed to the incident and
10 sometimes they did not. RT at 1944:20-1945:4. He also found
11 "varying levels of communication between the clinical staff and
12 custody as to how that mental health assessment process was
13 working," with R.J. Donovan standing alone in the quality of
14 communication between clinical and custodial staff in the rules
15 violation process. RT at 1947:6-20. He testified that it was
16 difficult to monitor what, if any, role the mental health
17 assessment plays in the rules violation process. RT at 1948:2-
18 16. He also testified that he rarely, if ever, found diversion
19 of mentally ill inmates from sanctions even though in his opinion
20 that "should happen" at least sometimes if the information on the
21 form is properly gathered and used. RT at 1951:14-1952:8.²³

22 Based on the foregoing, the issue relative to the
23 disciplinary process turns on the adequacy of defendants'

24
25 ²³ The testimony at the evidentiary hearing was consistent with the uneven
26 implementation of the RVR mental health assessment policy reported by the
27 Special Master in his Twenty-Fourth and Twenty-Fifth Round Monitoring Reports.
28 See Twenty-Fourth Round Monitoring Report (ECF No. 4205) at 87, 98, 108, 120,
142, 155, 164, 180-81, 197-98, 208, 220-221, 232; Twenty-Fifth Round
Monitoring Report (ECF No. 4298) at 98-99, 104, 114, 125, 128, 139-40, 145,
159, 169, 193, 202, 219, 231, 242, 252, 267, 275, 288, 300, 310, 323-24, 336,
346, 357, 365, 376, 382, 386, 389, 393, 399, 414, 424.

1 implementation of the plan agreed to by the parties and approved
2 by the Special Master in 2011. Accordingly, the court will
3 direct the Special Master to report to the court within six
4 months whether defendants have adequately implemented the RVR
5 policies and procedures agreed to in 2011.

6 At the hearing, the court also received evidence of a
7 practice referred to as "Management Status." Director Stainer
8 testified that "management status" was then part of local
9 operating procedures at a majority of, but not all, prison
10 institutions. RT at 887:7-12. He testified that it differed from
11 the rule violation process because it was not imposed as part of
12 the disciplinary process but is an alternative sanction imposed
13 as an "indirect response to a set of threatening behaviors to
14 stop those behaviors from continuing." RT at 889:15-21. He also
15 testified that his office had received local operational
16 procedures for management status from every prison that "has this
17 process in their local operating procedure" and was "in the
18 process of reviewing it for consistencies." RT at 888:6-14.
19 His office was "going to come out with a formatted operational
20 procedure for each institution to, again, fill in only site
21 specific issues so we have a consistent application of those
22 processes, making sure that appropriate due processes are in
23 place for the inmates, and checks and balances for the
24 application for these precautions in the management cell status"
25 and to avoid "arbitrary placement of an individual on these type
26 of sanctions." RT at 888:13-20, 891:2-3.²⁴

27 ²⁴ During the proceedings on plaintiffs' motion concerning segregated housing,
28 the court also heard testimony about the use of management cells in
administrative segregation units. Plaintiffs' expert, Dr. Haney, described

1 Defendants will be directed to work with the Special Master
2 on a timeline for completion of the review process testified to
3 by Mr. Stainer so that defendants' use of management status can
4 be reviewed by the Special Master as part of his review of the
5 implementation of defendants' RVR policies and procedures.

6 IV. Segregated Housing

7 By their May 6, 2013 motion, plaintiffs seek additional
8 remedial orders related to housing of seriously mentally ill
9 inmates in administrative segregation and segregated housing
10 units. Serious issues concerning placement of class members in
11 administrative segregation and segregated housing units have
12 plagued this litigation since its inception.

13 In 1995, the court found that defendants were violating the
14 Eighth Amendment in housing mentally ill inmates in
15 "administrative segregation and segregated housing at Pelican
16 Bay SHU and statewide . . . because mentally ill inmates are
17 placed in administrative segregation and segregated housing
18 without any evaluation of their mental status, because such
19 placement will cause further decompensation, and because inmates
20 are denied access to necessary mental health care while they are
21 housed in administrative segregation and/or segregated housing.'" Coleman v. Wilson, 912 F.Supp. at 1380 (internal citation
22 omitted).

23
24 As recently as last year, it was evident that the
25 constitutional violation had not been remedied. In the April
26 2013 order denying defendants' termination motion, the court
27 them as "punishment cells" and he testified that he interviewed class members
28 inside these cells but could not find any standards for their use in Title 15.
RT at 2186:18-2187:25.

1 specifically identified the need to address "ongoing issues
2 related to placement of EOP (Enhanced Outpatient) inmates in
3 administrative segregation, particularly those housed in such
4 units for over 90 days" as a "'critically important' goal[] . . .
5 necessary to remedy the Eighth Amendment violation in this
6 action." Coleman v. Brown, 938 F.Supp. at 969 (internal citation
7 omitted). Specifically, the court found this "critical goal"

8 centers on treatment of mentally ill inmates
9 in administrative segregation, particularly
10 those whose stays in these units exceed
11 ninety days and those who are placed in
12 administrative segregation for non-
13 disciplinary reasons. These inmates face
14 substantial risk of serious harm, including
15 exacerbation of mental illness and potential
16 increase in suicide risk. See Twenty-Fifth
17 Round (ECF No. 4298) at 36. The evidence
18 before the court shows that a
19 disproportionate number of inmate suicides
20 occur in administrative segregation units.
21 Remedial efforts over the past six years have
22 focused on reducing the length of time EOP
23 inmates remain in administrative segregation
24 and providing appropriate clinical care for
25 EOP inmates housed in such units. See id. at
26 34-35.

27 In their motion, defendants contend that they
28 have "developed and implemented procedures
for placing and retaining inmates with mental
health needs in any administrative
segregation or security housing unit."
Termination Motion (ECF No. 4275-1) at 29.
Defendants contend that while mentally ill
inmates are in these units their mental
health needs are "being appropriately met"
and that there is no evidence to the
contrary. Id. This contention is not
supported by defendants' own experts.

Defendants' experts describe the "environment
of administrative segregation" as "generally
non-therapeutic." Clinical Exp. Rpt. (ECF No.

1 4275-5) at 20. They recommend that housing
2 inmates with serious mental disorders be "as
3 brief as possible and as rare as possible."
4 Id. at 25.FN41 Defendants' experts noted the
5 "statistical overrepresentation of completed
6 suicides" in administrative segregation units
7 when compared to other housing units,
8 accordingly, recommend that "placement of
9 inmates who require an EOP level of care be
10 housed in Administrative Segregation Units
11 only when absolutely necessary for the safety
12 of staff or other inmates, and only for as
13 long as it absolutely necessary." Id. at 23.
14 They also reported finding, at two prisons,
15 "some inmates waiting for EOP Special Needs
16 Yard beds and reportedly housed in an
17 Administrative Segregation Unit for their own
18 protection; not because they posed a danger
19 to others." Id. at 21.FN42 They recommended
20 that such inmates be "placed in the front of
21 any waiting list." Id.

22 FN41. They also "applaud CDCR's efforts to
23 expedite the transfer of EOP inmates out of
24 administrative segregation" but they don't
25 describe what those efforts are. Id. at 20.

26 FN42. Defendants' experts describe a single
27 case at California Medical Facility (CMF) as
28 having "no systemic implications" but they
reiterate their recommendation that such
inmates be "moved to the top of the transfer
list." Id. at 24.

In the Twenty-Fifth Round Report, the Special
Master reported an ongoing need for
improvement in treatment provided to inmates
needing an Enhanced Outpatient (EOP) level of
care who are placed into administrative
segregation units. See Twenty-Fifth Round
Report (ECF No. 4298) at 34-38. The Special
Master reports an "elevated proportion of
inmates in administrative segregation who are
mentally ill" and describes a series of
issues to be addressed, including

reduction of risks of decompensation
and/or suicide, alternatives to use of
administrative segregation placements

1 for non-disciplinary reasons, access to
2 treatment/mitigation of harshness of
3 conditions in the administrative
4 segregation units, suicide prevention,
and reduction of lengths of stay in
administrative segregation.

5 Id. at 38. The Special Master's findings
6 identify remaining issues that are also
7 identified by defendants' experts. These
8 issues, until remedied, mean that seriously
9 mentally ill inmates placed in administrative
segregation units continued to face a
substantial risk of harm.

10 Id. at 979-980.²⁵ The principal question before the court is
11 whether there have been sufficient changes in defendants' present
12 policies and practices over the past year to cure the identified
13 systemic constitutional violations and, if not, whether
14 additional remedies are necessary.²⁶

15 Defendants oppose plaintiffs' motion in part by contesting

16 ²⁵ Most of the issues at bar were the subject of a series of meetings convened
17 by the Special Master in October 2012. See Twenty-Fifth Round Monitoring
18 Report (ECF No. 4298) at 34-38. Two meetings were held in 2012, and the
19 Special Master intended to continue with the meetings and report on progress
20 in subsequent monitoring reports. Id. at 38. "Among the issues to be
21 addressed in upcoming meetings [we]re the elevated proportion of inmates in
22 administrative segregation who are mentally ill, reduction of risks of
decompensation and/or suicide, alternatives to use of administrative
segregation placements for non-disciplinary reasons, access to
treatment/mitigation of harshness of conditions in the administrative
segregation units, suicide prevention, and reduction of lengths of stay in
administrative segregation." Id. It is apparent that defendants' termination
motion and the ensuing litigation interrupted that process.

23 ²⁶ Plaintiffs make a series of contentions and seek a variety of orders. The
24 specific issues presented in the motion can be divided into six categories:
25 (1) whether certain class members should be excluded from segregated housing
26 altogether; (2) whether class members are improperly housed in disciplinary
27 segregation units for non-disciplinary reasons; (3) whether class members are
28 held in both administrative segregation and segregated housing units for
excessive periods of time; (4) whether the mental health treatment program for
administrative segregation units is adequate; (5) whether defendants perform
adequate welfare checks on class members housed in segregation; and (6)
whether security measures used in segregation units, including strip searches
and holding cages, violate the Eighth Amendment rights of class members.

1 the evidence and opinions of plaintiffs' expert, Dr. Craig Haney,
2 concerning the harmful effects of segregated housing on certain
3 mentally ill inmates. Defendants contend that "Dr. Haney's
4 opinions are derived from studies that do not stand up to modern
5 scientific scrutiny." Defs. Opp. to Pls.' Mot. Related to
6 Housing and Treatment of Mentally Ill Inmates in Segregation,
7 filed July 24, 2013 (ECF No. 4712), at 12. Defendants tendered
8 their own expert, Dr. Charles Scott, who summarized "various
9 longitudinal studies" and avers that those studies "indicate that
10 segregation does not cause the type and severity of psychological
11 harm previously described in descriptive studies." Declaration
12 of Charles Scott, M.D., filed July 24, 2013 (ECF No. 4715) at ¶
13 28. At the hearing, Dr. Scott testified concerning two of those
14 studies, the only two studies he relied on, the so-called Zinger
15 study published in the Canadian Journal of Criminology in January
16 2001 and the so-called O'Keefe study published in 2013 in the
17 Journal of the American Academy of Psychiatry Law. See Exs. 1
18 and 2 to Defs. Ex. WWW.

19 The court is not persuaded by the conclusions Dr. Scott
20 draws from those studies. First, both studies expressly reject
21 extrapolation of their findings to other jurisdictions. See Ex.
22 2 to Defs. Ex. WWW at 32-33 (Zinger study cautions that "it would
23 be ill advised to attempt to extrapolate the findings of this
24 study (a) beyond 60 days of administrative segregation, and (2)
25 to other jurisdictions. For example, the findings of this study
26 are somewhat irrelevant to current segregation practices in the
27 United States where prisoners can sometimes be segregated for
28 years for disciplinary infractions with virtually no

1 distractions, human contacts, services, or programs."); see also
2 Ex. 1 to Defs. Ex. WWW at 11-12 ("Although this study
3 incorporated several design features that improved on the
4 capacity of previous research to draw conclusions about the
5 effects of AS [Administrative Segregation], there are several
6 limitations that affect its generalizability to other settings .
7 . . segregation conditions vary from state to state on a host of
8 variables, including average duration of AS, double-bunking,
9 televisions, exercise, selection criteria for AS, and quality and
10 quantity of mental health and medical services. Thus, the
11 results of the study can be generalized only to other prisons
12 systems to the extent that their conditions of AS confinement are
13 similar to Colorado's²⁷.")²⁸ Second, in response to a question
14 from the court, Dr. Scott agreed that there were studies he had
15 confidence in "which demonstrate that . . . going to ad seg has
16 no consequences for the mentally ill," "primarily the O'Keefe and
17 Metzner study . . . [b]ut the Zinger was sort of a precursor to
18 that." RT at 3359:13-23. The O'Keefe study specifically eschews
19 such confidence:

20 This study was not designed to address the
21 question of whether segregation is an
22 appropriate confinement option for offenders,
 including those with serious and persistent

23 _____
24 ²⁷ Dr. Scott testified to what he understands to be some of the "similarities
25 and differences between the California ad seg and the Colorado ad seg." RT at
26 3344:14-16. Because he has never visited a California segregation unit, he
27 compared descriptions in the O'Keefe article with provisions of the CDCR
28 Mental Health Program Guide. RT at 3344:14-3345:6. He testified that he did
not know whether the prisons are conforming to the requirements of the Program
Guide. RT at 3344:2-3345:3.

²⁸ The O'Keefe study also cautioned that the conclusions of the Zinger study
"must be interpreted cautiously" due to "high refusal and attrition rates."
Ex. 1 to Defs. Ex. WWW at 3.

1 mental illness. We are unaware of any
2 treatment guidelines that suggests that long-
3 term confinement in an AS environment would
4 be clinically helpful. . . . We do not
5 claim, nor believe, that these data
6 definitively answer the question of whether
7 long-term segregation causes psychological
8 harm. . . . Frankly, having seen individuals
9 in psychological crisis in segregation, we
10 were surprised that such effects did not
11 appear in these data. We believe that this
12 study moves us forward, but that future
13 research will shed additional light on this
14 crucial question.

15 Ex. 1 to Defs. Ex. WWW at 12.

16 Despite Dr. Scott's testimony, the court concludes that
17 confinement in California's administrative segregation units
18 presents significant risks for seriously mentally ill
19 individuals. As recently as last year, defendants' own experts
20 reported on the harsh, "generally non-therapeutic" environment of
21 California's administrative segregation units and recommended
22 that the lengths of stay in such units be minimized for seriously
23 mentally ill inmates. Coleman v. Brown, 938 F.Supp.2d at 979
24 (citing Clinical Exp. Rpt. (ECF No. 4275-5) at 20, 25). In
25 addition, a disproportionately high rate of inmate suicides occur
26 in these units. See Coleman v. Brown, 938 F.Supp.2d at 955. At
27 the hearing, both parties introduced evidence of the number of
28 inmate suicides in 2012 and 2013. Pls. Ex. 2781; Defs. Ex.
29 LLLL.²⁹ Defendants argue that the number of class member suicides

²⁹ The source of the data depicted in defendants' Ex. LLLL is not clear from the exhibit itself. Dr. Belavich testified that his attorney worked with Dr. Belavich's staff to prepare the chart. RT at 3704:24-3705:1. Dr. Belavich testified, inter alia, that he "trusted" that his staff's numbers "agreed with those" reported by the Special Master. RT at 3707:5-9. As it turns out, the numbers are not in complete agreement. Defendants' Ex. LLLL shows 33 inmate suicides in 2011. The Special Master reported 34 inmate suicides in 2011, a

1 in administrative segregation declined in 2013, and that "the
2 number of class members who have committed suicide within
3 segregation units, even considering those in Security Housing
4 Units and Psychiatric Units, is not disproportionate to those
5 outside the class." Defs. Post-Evidentiary Hearing Brief (ECF
6 No. 4988) at 12. This argument misses the mark.

7 The findings concerning disproportion in inmate suicides in
8 California's administrative segregation units are based on the
9 suicide rate in ASUs, PSUs, and SHUs,³⁰ as compared to the suicide
10 rate in non-segregated housing units. See Report on Suicides
11 Completed in the California Department of Corrections and
12 Rehabilitation January 1, 2012-June 30, 2012 (First Half 2012
13 Suicide Report) (ECF No. 4376) at 16 (the most meaningful
14 measurement for assessing trends over time is "the number of
15 suicides per inmate and the rate of suicides (i.e. the number of
16 suicides per 100,000 inmates) *within* segregated housing units, as
17 compared to the incidence and rate of suicides in non-segregated
18 housing.") The suicide rate is derived from the total number of
19 inmate suicides in these units, not just those committed by
20 inmates who were at the time of their deaths identified at a
21 level of care in the mental health services delivery system. See,
22 e.g., First Half 2012 Suicide Report (ECF No. 4376) at 4, 43;

23 fact vigorously disputed by defendants. See Orders filed March 15, 2013 (ECF
24 No. 4394) and March 22, 2013 (ECF No. 4435). Ultimately this court overruled
25 defendants' objections and denied their motion to modify the number of inmate
suicides reported by the Special Master for 2011. See Order filed March 22,
2013 (ECF No. 4435).

26 ³⁰ Inmate suicides in California's condemned unit, while reported by the
27 Special Master, have not been included in the raw number of segregation unit
28 suicides. See, e.g., Report on Suicides Completed in the California Department
of Corrections and Rehabilitation in Calendar Year 2011 (2011 Suicide Report)
(ECF No. 4308) at 6, 26.

1 2011 Suicide Report (ECF No. 4308) at 6, 26. Thirteen of the
2 thirty-two inmate suicides in CDCR prisons in 2012 were committed
3 in ASUs, PSUs, and SHUs. Pls. Ex. 2781. Through December 17,
4 2013, the same number - thirteen - of twenty-eight inmate
5 suicides were committed in ASUs, PSUs, and SHUs. Id. Thus, the
6 raw number of inmate suicides is unchanged and defendants'
7 exhibit does not reflect the suicide rate.

8 Defendants acknowledge disproportion in the number of inmate
9 suicides in administrative segregation. See Annual Report of
10 Suicides in the CDCR During 2012, Ex. 2 to Declaration of Margot
11 Mendelsohn filed February 5, 2014 (ECF No. 5051-1) at 18-19. The
12 disproportion is evidence of the high risk environment in
13 California's administrative segregation units, a risk faced by
14 all inmates housed in those units and particularly those with a
15 serious mental illness, a risk defendants have acknowledged.³¹
16 See id. at 18. ("CDCR continues to treat segregation units as
17 high-risk environments for vulnerable inmates, particularly
18 during the period soon after placement.")

19 Together with the court's original findings and its findings
20 on defendants' termination motion, the foregoing findings and the
21 overwhelming weight of evidence in the record is that placement
22 of seriously mentally ill inmates in California's segregated
23 housing units can and does cause serious psychological harm,

24
25 ³¹ The fact that in 2012, eleven of the thirteen were part of the mental health
26 services delivery system at the time of their deaths, while only six of the
27 thirteen were so identified in 2013 may be as suggestive of additional
28 problems in California's administrative segregation units, including
inadequate mental health assessments and suicide risk, or it might be of
improvements that have reduced for one year the number of class member
suicides in administrative segregation. That question is not before the court
at this time.

1 including decompensation, exacerbation of mental illness,
2 inducement of psychosis, and increased risk of suicide. The
3 question before the court is whether defendants have made
4 progress since last year sufficient to remediate these serious
5 risks of harm, or whether additional orders are required.

6 A. Administrative Segregation

7 State regulations require administrative segregation of
8 inmates whose safety is jeopardized in the general population as
9 well as inmates who pose threats to the safety of others or
10 "jeopardize[]the integrity of an investigation of an alleged
11 serious misconduct or criminal activity." 15 C.C.R. § 3335(a).³²
12 Placement in administrative segregation may be for disciplinary
13 or non-disciplinary reasons. See 15 C.C.R. §§ 3335, 3338; see
14 also RT at 2898:2-2899:15; 2907:17-2908:19; Reply Austin Decl.
15 (ECF No. 4762) at ¶ 18. "Administrative segregation may be
16 accomplished by confinement in a designated segregation unit or,
17 in an emergency, to any single cell unit capable of providing
18 secure segregation." 15 C.C.R. §3335(a). Administrative
19 Segregation Units (ASUs) are distinguished from Segregated
20 Program Housing Units (Security Housing Units (SHUs) and
21 Psychiatric Services Units (PSUs) in that ASUs "are generally
22 temporary segregation housing units which, as the name implies,
23 are to administratively review the need for segregation, whereas
24 Segregated Program Housing [Units] . . . are designed for

25 ³² The regulation provides: "When an inmate's presence in an institution's
26 general population presents an immediate threat to the safety of the inmate or
27 others, endangers institution security or jeopardizes the integrity of an
28 investigation of an alleged serious misconduct or criminal activity, the
inmate shall be immediately removed from general population and be placed in
administrative segregation." 15 C.C.R. §3335(a).

1 extended term programming." Declaration of Kathleen Allison,
2 filed July 24, 2013 (ECF No. 4713) at ¶ 9.

3 Certain reasons for removal of an inmate from the general
4 population are not considered administrative segregation. See 15
5 C.C.R. § 3340. Two of those exclusions are relevant to the
6 motion at bar:

7 (a) Medical. When an inmate is involuntarily
8 removed from general inmate status for
9 medical or psychiatric reasons by order of
10 medical staff and the inmate's placement is
11 in a hospital setting or in other housing as
12 a medical quarantine, the inmate will not be
13 deemed as segregated for the purpose of this
14 article. When personnel other than medical
15 staff order an inmate placed in
16 administrative segregation for reasons
17 related to apparent medical or psychiatric
18 problems, that information will be
19 immediately brought to the attention of
20 medical staff. The appropriateness of
21 administrative segregation or the need for
22 movement to a hospital setting will be
23 determined by medical staff. When medical and
24 psychiatric reasons are involved, but are not
25 the primary reasons for an inmate's placement
26 in administrative segregation, administrative
27 segregation status will be continued if the
28 inmate is moved to a hospital setting and the
requirements of this article will apply.

(b) Orientation and Lay-Over. Newly received
inmates and inmates in transit or lay-over
status may be restricted to assigned quarters
for that purpose. Such restrictions should
not be more confining than is required for
institution security and the safety of
persons, nor for a period longer than the
minimum time required to evaluate the safety
and security factors and reassignment to more
appropriate housing.

15 C.C.R. § 3340(a), (b).

1 Prior to amendments discussed infra, all inmates assigned to
2 administrative segregation were placed in Privilege Group D. See
3 Defs. Ex. 000, Initial Statement of Reasons at 1. Placement in
4 this highly restrictive group removes all family visits and
5 access to "recreational or entertainment activities" and limits
6 canteen draw, telephone calls, and personal property as follows:

7 (A) No family visits.

8 (B) One-fourth the maximum monthly canteen
9 draw as authorized by the secretary.

10 (C) Telephone calls on an emergency basis
11 only as determined by institution/facility
staff.

12 (D) Yard access limited by local
13 institution/facility security needs. No
14 access to any other recreational or
entertainment activities.

15 (E) The receipt of one personal property
16 package, 30 pounds maximum weight, per year,
17 exclusive of special purchases as provided in
18 Section 3190. Inmates shall be eligible to
acquire a personal property package after
completion of one year of Privilege Group D
assignment.

19 15 C.C.R. § 3044(g)(3).

20 1. Non-Disciplinary Segregation

21 In late 2013, defendants created and began to implement a
22 new classification identified as nondisciplinary segregation
23 (NDS). RT at 2904:12-2905:17; see also Defs. Ex. 000. Non-
24 Disciplinary Segregation is "Segregated housing placement for
25 administrative reasons to include, but not limited to: ASU
26 placement for safety concerns, investigations not related to
27 misconduct or criminal activity, and/or being a relative or an
28

1 associate of a prison staff member." RT at 2908:6-16. The Non-
2 Disciplinary Segregation (NDS) classification is designed to
3 "afford inmates segregated in ASU for non-disciplinary reasons
4 privileges more consistent, but not identical, with their pre-
5 segregation privilege group." Defs. Ex. 000, Initial Statement
6 of Reasons at 1. Inmates placed in the NDS category are still
7 "limited to non-contact visits due to safety and security
8 concerns as well as assisting in the prevention of contraband
9 into the ASU." Id. at 2. In addition, yard access for NDS
10 inmates is "limited by local institution/security needs and NDS
11 inmates may be permitted to participate and have access to
12 programs, services, and activities as can reasonably be provided
13 in the unit without endangering the security and safety of
14 persons," Id.

15 At present, a "significant number" of Coleman class members
16 are placed in administrative segregation units for non-
17 disciplinary reasons, including safety concerns and lack of
18 appropriate bed space. See RT at 2222:25-2227:6; RT at 2255:5-
19 2256:20.³³ Defendants do not have separate housing units for
20 disciplinary administrative segregation and non-disciplinary

21
22 ³³ The evidence concerning the number of class members in administrative
23 segregation for non-disciplinary reasons was imprecise for a variety of
24 reasons. See, e.g., RT at 2428:1-25 (testimony of Craig Haney); RT at
25 3182:11-3186:18 (testimony of Kathleen Allison concerning differences between
26 placement in administrative segregation for safety concerns versus non-
27 disciplinary segregation classification and percentages of inmates in
28 administrative segregation). While defendants offered evidence that only a
"small number" of class members had been classified in the non-disciplinary
segregation category, see Defs. Ex. QQQ, it is evident that the process of
classifying inmates into the NDS category is ongoing and the number of inmates
on Ex. QQQ does not represent the total number of class members housed in
administrative segregation units for non-disciplinary reasons. See
RT:2987:23-2988:6. Moreover, Ms. Allison testified at her deposition that
twenty to thirty percent of inmates in administrative segregation were there
for nondisciplinary reasons. RT at 3185:11-3186:18.

1 segregation placements or for inmates housed in administrative
2 segregation pending transfer to an appropriate bed. See Reply
3 Austin Decl. (ECF No. 4762) at ¶ 38. Defendants' new regulations
4 say that "when practical and feasible" individual prison
5 institutions should try to "cluster" inmates with a non-
6 disciplinary segregation classification "into a specific section"
7 within an administrative segregation unit. RT at 2964:23-
8 2965:12. Dr. Haney testified that it is a "very unusual
9 phenomenon," a "bad mix," and a "questionable" correctional
10 practice to place inmates with safety concerns in the same
11 segregation unit as inmates placed there for disciplinary
12 reasons. RT at 2254:7-21.

13 Between 2007 and 2012, roughly half of the suicides in
14 California's administrative segregation units were by inmates in
15 administrative segregation for non-disciplinary reasons. RT at
16 2242:15-23; Pls. Ex. 2048. In January 2013, Dr. Robert Canning,
17 defendants' Suicide Prevention Coordinator, issued a report
18 analyzing CDCR suicides during this period. Pls. Ex. 2049. In
19 his report, he noted that

20 data collected by suicide evaluators found
21 that many inmates who housed in ASU at the
22 time of their deaths are placed there not for
23 disciplinary reasons, but for safety reasons.
24 Although there are many complexities
25 surrounding these situations, it is worth
26 noting that placement in ASU of already
27 fearful inmates may only serve to make them
28 even more fearful and anxious, which may
29 precipitate a state of panicked desperation,
30 and the urge to die.

31 Id. at 2. Plaintiffs' expert, Dr. Haney, agreed with this
32 opinion. RT at 2244:11-25.

1 Because of the absence of separate housing units, even with
2 the new NDS classification class members in administrative
3 segregation for non-disciplinary reasons are still subject to
4 several significant restrictions placed on inmates housed in
5 administrative segregation for disciplinary reasons, including no
6 contact visits, significant limits on access to both exercise
7 yards and dayroom, eating all meals in their cells, and being
8 placed in handcuffs and restraints when being moved outside their
9 cells. RT at 3200:1-19. Class members in administrative
10 segregation for non-disciplinary reasons often receive mental
11 health treatment in confined spaces described by plaintiffs'
12 expert as "treatment cages." RT at 2167:20-23 (Haney). They are
13 subjected to strip searches each time they leave their housing
14 unit for mental health treatment and each time they return. RT
15 at 2173:20-2175:14. Dr. Haney testified that in his opinion this
16 practice "serves as a disincentive" for mentally ill inmates to
17 go to treatment because the searches are "humiliating and
18 degrading." RT at 2175:15-2176:6.

19 During the hearing, defendants presented the court with a
20 memorandum dated December 3, 2013 limiting to thirty and sixty
21 days respectively administrative segregation placements of EOP
22 and CCCMS inmates with an NDS classification. Defs. Ex. RRR.³⁴
23 The memorandum includes deadlines for presentation of these cases
24 to a classification staff representative (CSR) to "facilitate the
25

26 ³⁴ The NDS classification designation must be made by an Institution
27 Classification Committee (ICC) and it takes ten calendar days from the time an
28 inmate arrives in administrative segregation to be seen by an ICC for
classification. RT at 2989:1-11. Thus, the total length of stay for NDS
inmate-patients under the new policy would actually be forty days for EOP
inmates and seventy days for CCCMS inmates.

1 CSR referral, endorsement, and transfer process." Id. Finally,
2 it requires reporting of all such cases that exceed the deadline
3 to the relevant institution's Associate Director, who "shall
4 provide assistance and support when appropriate to the
5 institutions to remedying identified impediments to release or
6 transfer." Id. Given the significant mental health risks posted
7 by placement in these units, these times frames are too long.

8 Seriously mentally ill inmates in administrative segregation
9 for non-disciplinary reasons have done nothing to transgress the
10 rules of the institution. They are generally in need of
11 protection or placement where they have access to necessary
12 mental health services. The only explanation offered in the
13 record for California's failure to have separate units for
14 disciplinary and non-disciplinary segregation is the overcrowded
15 conditions that have plagued the prison system for at least a
16 decade. See Reply Austin Decl. (ECF No. 4762) at ¶ 39. The only
17 explanations tendered for defendants' failure to expedite
18 transfer of class members in administrative segregation for non-
19 disciplinary reasons, including safety concerns and lack of
20 appropriate bed space, are overcrowded prison conditions, an
21 insufficient number of buses to accomplish timely transfers, and
22 the length of time it takes to complete the administrative
23 processes required for transfer. See id. at ¶¶ 39, 44; see also
24 RT at 2129:13-24; RT:3190:1-3191:24.³⁵ None of these explanations

25 _____
26 ³⁵ Defendants have a separate transportation system for inmates who require
27 transfer to Mental Health Crisis Beds. See RT at 3462:17-3463:12. Ms.
28 Allison testified that defendants have considered using this system "as an
option" to expedite transfers of NDS EOP inmates from administrative
segregation units. RT at 3221:24-3222:3.

1 justify subjecting these class members to these conditions for
2 these periods of time.

3 Plaintiffs' expert, Dr. James Austin, testified that there
4 is "no reason" to hold class members in non-disciplinary
5 segregation for these period of time, and that in states he works
6 in, inmates who need to be transferred to an appropriate mental
7 health bed placement are transferred within twenty-four hours.
8 RT at 3021:8-3022:11. CDCR's then Acting Statewide Director of
9 Mental Health, Dr. Timothy Belavich,³⁶ agrees that mentally ill
10 inmates in administrative segregation for non-disciplinary
11 reasons should be moved to an appropriate program "as quickly" as
12 possible. RT at 3563:7-12, 3564:17-21.

13 Mentally ill inmates in administrative segregation for non-
14 disciplinary reasons "are treated, for obvious intents and
15 purposes, as if they are in an administrative segregation prison
16 there for disciplinary reasons even though they're not." RT at
17 2167:20-2168:4; see also Reply Austin Decl. (ECF No. 4762) at ¶
18 45 (even with new NDS classification "'non-disciplinary'
19 prisoners will still be mixed with disciplinary or disruptive
20 prisoners in the same segregation units and be subject to the
21 same custodial restrictions, including very limited out-of-cell
22 time and no access to work, education, and other meaningful
23 programs.") Dr. Haney testified that it is "utterly
24 inappropriate" to house these inmates in these units "on more
25 than a very short-term basis." RT at 2224:11-12.

26 We're talking about mental patients who are
27 now not only vulnerable because they're

28 ³⁶ Dr. Belavich is now the Director of CDCR's Division of Health Care Services.

1 mental patients but vulnerable because they
2 have safety concerns, being placed in an
3 environment that we know is harmful to the
4 mental health of the mentally ill prisoners
5 who are placed there.

6 So they are doubly at risk. They go in as
7 vulnerable mental health prisoner, . . . who
8 are now at risk and all the psychological
9 burden that carries with it, and they're
10 placed in an environment in which they're in
11 isolation and locked in their cells basically
12 23 hours a day.

13 RT at 2224:21-2225:7. Dr. Haney also testified that although
14 such mixed placements "could be done on an expedient basis" if
15 there is nowhere else to put an inmate with safety concerns, that
16 should be accompanied by a sense of urgency to move the inmate
17 with safety concerns to a non-administrative or lockdown setting.

18 RT at 2254:22-2255:4.

19 In December 2012, defendants issued an operational plan for
20 disabled inmates covered by the Armstrong class action.³⁷ The
21 operational plan covers Armstrong class members housed in
22 administrative segregation "due solely to a lack of appropriate
23 accessible General Population (GP) housing (including Sensitive
24 Needs GP)." Ex. 9 to Declaration of Jane Kahn filed May 6, 2013
25 (ECF No. 4582) at 97. The procedure set forth in the model plan
26 sets forth specific procedures for these inmates, requires that
27 they be moved out of administrative segregation within 48 hours,
28 and provides specific notice procedures for three business days
29 following initial placement of these inmates in administrative
30 segregation. Id. There is no apparent reason for the
31 distinction between Armstrong & Coleman class members.

32 ³⁷ Armstrong v. Brown, No. C94-2307 CW (N.D.Cal.)

1 For all of the foregoing reasons, the court finds that
2 placement of seriously mentally ill inmates in the harsh,
3 restrictive and non-therapeutic conditions of California's
4 administrative segregation units for non-disciplinary reasons for
5 more than a minimal period necessary to effect transfer to
6 protective housing or a housing assignment violates the Eighth
7 Amendment.³⁸ The record suggests several options to remedy this
8 constitutional violation, including but not limited to creation
9 of separate units for disciplinary and non-disciplinary
10 segregation, or adoption of a policy modeled on the Armstrong
11 operational plan for Coleman class members. Defendants will be
12 required, within thirty days, to present the court with a plan to
13 remedy this ongoing violation and they shall be prepared to
14 implement the plan within thirty days thereafter. Defendants
15 shall commence forthwith to reduce the number of Coleman class
16 members housed for non-disciplinary reasons in any administrative
17 segregation unit that houses disciplinary segregation inmates.
18 Commencing sixty days from the date of this order, defendants
19 will be prohibited from placing any Coleman class member in any
20 administrative segregation unit that houses disciplinary
21 segregation inmates for a period of more than seventy-two hours
22 if the placement is for non-disciplinary reasons including but
23 not limited to safety concerns or lack of appropriate bed space.

24 ////

25 _____
26 ³⁸ It is settled that prison inmates have no liberty interest in remaining in
27 the general prison population and that the due process clause is not violated
28 by the transfer of prison inmates to more restrictive settings for non-
punitive reasons. See, e.g., Anderson v. County of Kern, 45 F.3d 1310, 1315
(9th Cir. 1995). They do, however, retain the protections of the Eighth
Amendment in such settings. See Sandin v. Conner, 515 U.S. 472, 487 n.11.

1 2. Placement/Retention/Return to Administrative Segregation

2 Plaintiffs raise a number of issues related to placement of
3 at risk class members in administrative segregation, lengths of
4 stay in administrative segregation units, and adequacy of care
5 provided particularly to EOP inmate-patients. At the core,
6 resolution of these issues turns on a common question: what is
7 the proper role of mental health clinicians in the housing
8 decisions presented when seriously mentally ill inmates must be
9 removed from a prison's general population for disciplinary
10 reasons.³⁹ As with the issues related to use of force and rules
11 violation reports already discussed, defendants have not yet
12 adequately incorporated necessary clinical judgments into these
13 decisions.

14 The evidence tendered at the hearing demonstrates that the
15 role of the mental health clinician is integral to placement
16 decisions in two separate but related ways. In relevant part,
17 the Eighth Amendment prohibits placements of seriously mentally
18 ill inmates in conditions that pose a substantial risk of
19 exacerbation of mental illness, decompensation, or suicide.
20 These risks may arise from an individual inmate-patient's
21 particular mental state and/or history of mental illness, from
22 the adequacy of care available in the proposed housing placement,
23 or both. Accurate and adequate assessment of these risks
24 requires the exercise of clinical judgment, and where that

25 _____
26 ³⁹ A separate issue arose at the hearing concerning the accuracy of defendants'
27 data concerning, in particular, lengths of stay in administrative segregation
28 and segregated housing units. Going forward, defendants will be required to
provide to the Special Master accurate information that clearly demonstrates
the total length of time that any Coleman class member spends in any
administrative segregation unit or segregated housing unit.

1 clinical judgment demonstrates existence of the risk that must be
2 avoided that judgment cannot be overridden by custodial
3 requirements. Instead, in situations where clinical judgment
4 demonstrates an unacceptable level of risk alternative placements
5 must be made.⁴⁰

6 The Program Guide contains a structure for delivery of
7 mental health services in administrative segregation, identified
8 as the Administrative Segregation Unit (ASU) Mental Health
9 Services (MHS) program. Pls. Ex. 1200 at 12-7-1. Responsibility
10 for the ASU MHS program at each institution rests jointly with
11 the Health Care manager and the Warden. Id. Operational
12 oversight for the ASU MHS lies with the Chief of Mental Health
13 for each institution. Id.

14 Custodial responsibilities, including initial
15 placement, disciplinary actions, correctional
16 counseling services, classification, inmate-
17 patient movement, and daily management shall
18 rest with the Warden or designee. The
19 assigned psychiatrist or Primary Clinician
(PC) shall attend all Institutional
Classification Committee (ICC) meetings to
provide mental health input.

20 Individual clinical case management,
21 including treatment planning, level of care
22 determination and placement recommendations,
23 are performed by the assigned PC and approved
24 by the institution Interdisciplinary
Treatment Team (IDTT).

24 ⁴⁰ The record shows that there are programs in place in other jurisdictions
25 which separate seriously mentally ill inmates from general population for
26 disciplinary reasons and impose conditions on release from these programs
27 without subjecting high-risk mentally ill inmates to the harsh conditions in
28 California's segregation units. See Reply Austin Decl. (ECF No. 4762) at
¶¶35-37. The court wishes to be clear, if rules violations occur which are
not the result of an inmate's mental illness, the state may, of course, impose
appropriate sanctions. What the state cannot do is impose sanctions, which by
virtue of the inmate's mental status, risks further deterioration.

1 Id. The Interdisciplinary Treatment Team must include, at a
2 minimum, the assigned primary clinician (PC), the assigned
3 psychiatrist, the licensed psychiatric technician (LPT) and the
4 assigned correctional counselor. Id. at 12-7-13.

5 Most of the ASU MHS program objectives appear designed to
6 prevent the identified risks of harm. See id. at 12-7-2.
7 Id. at 12-7-2.

8 The Program Guide requires a pre-placement mental health
9 screening of "all inmates" prior to placement in administrative
10 segregation. Id. at 12-7-2. This screening is "for possible
11 suicide risk, safety concerns, and mental health problems." Id.
12 An inmate who "screens positive" is "referred for a mental health
13 evaluation on an Emergent, Urgent, or Routine basis." Id. The
14 Program Guide also requires review of "all inmates" placed in ASU
15 for "identification of current MHSDS treatment status," said
16 review to occur within one work day of placement in ASU. Id. at
17 12-7-3. Mental health staff are required to "ensure the
18 continuity of mental health care, including the delivery of
19 prescribed medications." Id.

20 From the foregoing, it appears that, if adequately
21 implemented, the ASU MHS screening system is designed to capture
22 most, if not all, of the clinical information necessary to a
23 determination of whether a particular Coleman class member faces
24 a substantial risk of exacerbation of mental illness,
25 decompensation, or suicide from placement in administrative
26 segregation.⁴¹ The relevant information should be contained in

27 ⁴¹ The record shows that questions about the accuracy of the present screening
28 instrument arose over three years ago. See Ex. 45 to Confidential Declaration
of Jane Kahn, filed March 18, 2013 (ECF 4411-7 *SEALED*)(Minutes of November

1 the class member's unit health record and known to his or her
2 treating clinician at the time that ASU placement is considered.
3 See also RT at 3570:15-3571:21. The final housing decision,
4 however, rests with the Institution Classification Committee, and
5 there are no guidelines for weight to be given clinical criteria
6 in the placement decisions.

7 Dr. Belavich testified that at present mental health staff
8 are not consulted about whether the mental health of class
9 members facing segregation is sufficiently stable to withstand
10 the mental health consequences of such placement. RT at 3688:21-
11 3689:3. He was of the view that clinicians should be so
12 consulted. RT at 3689:4-9. Dr. Belavich also testified that he
13 and his staff could work with custody staff to develop a plan for
14 additional mental health input into the segregation placement
15 process.⁴² RT at 3693:3-13.

16 The court concludes that defendants must develop a protocol
17 for placement decisions, including, as appropriate, a plan for
18 alternative housing, that will preclude placement of any Coleman
19 class member in existing administrative segregation units when
20 clinical information demonstrates substantial risk of
21 exacerbation of mental illness, decompensation, or suicide from
22 such placement.

23
24
25 8, 2010 Suicide Prevention and Response-Focused Improvement Team (SPR FIT), at
26 74. If they have not been, those must be resolved going forward.

27 ⁴² During Dr. Belavich's testimony, counsel for defendants offered to "suspend
28 the proceedings to discuss these issues." RT at 3692:22-24. While the court
decided to complete the hearing, the court infers from testimony from Dr.
Belavich as well as counsel's representation that defendants will bring due
diligence to the task required by this order.

1 Class members who can be placed in administrative
2 segregation without the foregoing substantial risks of harm must
3 have access to adequate mental health care during the placement.
4 The Program Guide includes mental health services in
5 administrative segregation units. The ASU MHS program is
6 designed to provide mental health services for CCCMS inmate-
7 patients in every administrative segregation unit at a level that
8 equals or exceeds the mental health services provided to CCCMS
9 patients in the general population. See Pls. Ex. 1200, Program
10 Guide at 12-3-8 to 12-3-10; 12-7-7; see also RT at 3467:17-
11 3468:3.

12 EOP services are only provided in EOP ASU "hubs."⁴³ The
13 Program Guide has three options for inmate-patients placed in ASU
14 who require an EOP level of care: (1) "Referral to an EOP
15 program for inmate-patients who are involved in non-violent
16 incidents and determined not to be a risk to others;" (2)
17 "Inmate-patients who are involved in serious rules violations and
18 whose propensity for threat to others and/or the security of the
19 institution is so high that no other alternative placement is
20 considered appropriate" are to be transferred to one the EOP ASU
21 hubs within thirty days; and (3) inmates who are serving
22 "established and endorsed SHU terms" are transferred to a
23

24 ⁴³ There are eleven EOP ASU hubs located at Central California Women's Facility
25 (CCWF), California Institution for Women (CIW), California Medical Facility
26 (CMF), California State Prison-Corcoran (COR), California State Prison-Los
27 Angeles County (CSP-LAC), Mule Creek State Prison (MCSP), R.J. Donovan (RJD),
28 California State Prison-Sacramento (SAC), San Quentin State Prison (SQ), and
Salinas Valley State Prison (SVSP). Defs. Ex. ZZZ. On October 25, 2013,
there were a total of 579 EOP inmate-patients in ASUs, 48 of whom were in non-
hub ASUs. Id. Systemwide, there were a total of 600 EOP ASU hub beds;
twenty-one were vacant. Id.

1 Psychiatric Services Units (PSU).⁴⁴ Pls. Ex. 1200, Program Guide
2 at 12-7-8.

3 The specific treatment criteria for the EOP level of care
4 requires the presence of either acute onset of symptoms or
5 significant decompensation due to mental illness, an inability to
6 function in the general population, or both. Id. at 12-4-3, 12-
7 4-4.⁴⁵ The evidence shows that the risks of harm for these
8 inmate-patients can be significantly higher in administrative
9 segregation units. Defendants' termination experts and
10 plaintiffs' experts both opined that placement of EOP inmates in
11 administrative segregation should be strictly limited, even where
12 an EOP level of care is provided. See Defs. Ex. HHH (ECF No.
13 4275-5) at 23, 25; Expert Declaration of Craig Haney, filed May
14 6, 2013 (ECF No. 4581) at ¶ 29. Dr. Belavich also testified that
15 his "goal as a clinician" is to get EOP inmate-patients into a
16 PSU "as soon as I can." RT at 3564:22-3565:8.

17
18 ⁴⁴ PSUs are at Pelican Bay, CIW, and SAC.

19 ⁴⁵ Acute Onset or Significant Decompensation of a serious mental disorder
20 characterized by symptoms such as increased delusional thinking, hallucinatory
21 experiences, marked changes in affect, and vegetative signs with definitive
22 impairment of reality testing and/or judgment; and/or
23 Inability to Function in General Population Based Upon:
24 a. A demonstrated inability to program in work or educational assignments, or
25 other correctional activities such as religious services, self-help
26 programming, canteen, recreational activities, visiting, etc. as a consequence
27 of a serious mental disorder; or
28 b. The presence of dysfunctional or disruptive social interaction including
withdrawal, bizarre or disruptive behavior, extreme argumentativeness,
inability to respond to staff directions, provocative behavior toward others,
inappropriate sexual behavior, etc., as a consequence of a serious mental
disorder; or
c. An impairment in the activities of daily living including eating, grooming
and personal hygiene, maintenance of housing area, and ambulation, as a
consequence of a serious mental disorder.
These conditions usually result in Global Assessment Functioning (GAF) Scores
of less than 50.

1 "Remedial efforts over the past six years have focused on
2 reducing the length of time EOP inmates remain in administrative
3 segregation and providing appropriate clinical care for EOP
4 inmates housed in such units." Coleman v. Brown, 938 F.Supp.2d
5 at 979. As already discussed, defendants' termination experts
6 reported that the environment in CDCR's administrative
7 segregation units "is not therapeutic" and that even where EOP
8 levels of care are provided "segregation is not a particularly
9 therapeutic environment to house inmates with serious mental
10 disorders." Defs. Ex. HHH (ECF No. 4275-5) at 23, 25.⁴⁶ In his
11 Twenty-Fifth Round Monitoring Report, the Special Master reported
12 that "ten of the 11 [EOP-ASU] hubs failed to offer at least ten
13 hours per week of structured therapeutic activity per week. Only
14 CIW was able to meet that benchmark. Structured therapeutic
15 activity is a critical part of EOP care in general. This is
16 particularly true in segregation units, where the group dynamic
17 and interaction with others can help ameliorate the anti-
18 therapeutic effects of isolation on the mentally ill patient."
19 Twenty-Fifth Round Monitoring Report (ECF No. 4298) at 37.

20 Some evidence presented at the hearing suggested recent
21 improvements in the provision of care in certain EOP Ad Seg hubs.
22 See, e.g., Defs. Ex. DDDD (compiling compliance rate with certain
23 Program Guide requirements for the month of October 2013); Defs,
24 Ex. GGGG. (compiling data on group therapy in EOP ASUs, EOP PSUs,
25 and for CCCMS patients in ASU and two SHUs). Overall review of

26 ⁴⁶ Taken together with the treatment criteria for the EOP level of care, which
27 requires significant impairment preventing functioning in a general population
28 setting, the fact that defendants' own experts found the EOP-ASU hub
environment "not particularly therapeutic" continues to be of grave concern to
this court.

1 the record suggests that the adequacy of care in individual EOP
2 ASU hubs varies based on several factors, including the physical
3 plant, available treatment space, and staffing levels. See,
4 e.g., RT at 3495:2-13; Twenty-Fifth Round Monitoring Report (ECF
5 No. 4298) at 37.

6 As discussed above, the Program Guide contains specific
7 requirements for necessary care in general administrative
8 segregation units and EOP ASU hubs. Dr. Belavich testified that
9 he receives substantial data from his staff that he uses to
10 review quality of care issues in these units, and the court was
11 impressed by his apparent diligence. Plainly, defendants cannot
12 house seriously mentally ill inmates in settings where defendants
13 know those inmates cannot receive the minimally adequate mental
14 health care required by the Program Guide. Whether or not the
15 care provided in each EOP ASU hub meets Program Guide
16 requirements is, again, a clinical judgment and one that must be
17 exercised by Dr. Belavich and his staff. Accordingly, defendants
18 will be required to provide monthly reports on whether each EOP
19 ASU hub meets Program Guide requirements for an EOP ASU level of
20 care and they will be prevented from admitting any Coleman class
21 member at the EOP level of care to any EOP ASU hub that does not
22 meet or exceed Program Guide requirements for a period of more
23 than two consecutive months. Moreover, defendants will also be
24 prevented from placing any Coleman class member at the EOP level
25 of care in any administrative segregation unit during any period
26 in which there are an insufficient number of EOP Ad Seg Hub beds
27 available.

28 c. Strip Searches

1 Plaintiffs seeks an order prohibiting defendants from
2 continuing their strip search policy in administrative
3 segregation units. Dr. Belavich testified that he was concerned
4 that this policy inhibited treatment and was aware that it needed
5 to be revisited. RT at 3503:18-3505:3. Defendants will be
6 directed to provide a revised policy to the court within sixty
7 days.

8 d. Suicide Prevention Measures

9 Plaintiffs seek a series of orders relative to suicide
10 prevention. See Pls. Post-Trial Brief Re: Enforcement of Court
11 Orders, filed January 21, 2014 (ECF No. 4985) at 30-33. By
12 minute order issued July 26, 2013, the court dropped
13 consideration of issues related to inmate suicide without
14 prejudice to their renewal, if appropriate, following a report
15 from the Suicide Prevention/Management Work Group. That order
16 stands.

17 B. Segregated Housing Units

18 In addition to numerous administrative segregation units,
19 California's prison system has three types of
20 "Segregated Program Housing Units." 15 C.C.R. §3341.5.
21 Protective Housing Units (PHUs) are for the protection of inmates
22 "whose safety would be endangered by general population
23 placement" and who meet specified criteria. 15 C.C.R. §
24 3341.5(a). Security Housing Units (SHUs) are for inmates "whose
25 conduct endangers the safety of others or the security of the
26 institution." 15 C.C.R. §3341.5(c). Psychiatric Services Units
27 (PSUs) are for seriously mentally ill inmates in the Enhanced
28

1 Outpatient Program (EOP) who require the equivalent of SHU
2 placement. 15 C.C.R. §3341.5(b).

3 In general, inmates may be placed in a SHU following
4 conviction of certain disciplinary offenses or after validation
5 as a member of a prison gang. See 15 C.C.R. § 3341.5(c)(1),
6 (2)(A)(2). SHU terms may be determinate or indeterminate. 15
7 C.C.R. § 3341.5(c)(2)(A), (B). An inmate subject to an
8 indeterminate SHU term whose SHU term is suspended "based solely
9 on the need for inpatient medical or mental health treatment" may
10 have the term "reimposed without subsequent misbehavior if the
11 inmate continues to pose a threat to the safety of others or the
12 security of the institution." 15 C.C.R. § 3341.5(c)(A)(3).

13 With very limited exceptions, almost all seriously mentally
14 ill inmates are excluded from the Pelican Bay SHU. See Pls. Ex.
15 1200 at 12-8-1 to 12-8-3.⁴⁷ In addition, male inmates requiring

16 ⁴⁷ Exclusion of seriously mentally ill inmates from the Pelican Bay SHU is the
17 result of a 1995 order in a separate class action lawsuit, Madrid v. Gomez,
18 No. C90-3094 TEH (N.D.Cal.). The Madrid court found, inter alia, Eighth
19 Amendment violations in SHU placement of "the already mentally ill, as well as
20 persons with borderline personality disorders, brain damage or mental
21 retardation, impulse-ridden personalities, or a history of prior psychiatric
22 problems or chronic depression" because these inmates were found to be "at a
particularly high risk for suffering very serious or severe injury to their
mental health, including overt paranoia, psychotic breaks with reality, or
massive exacerbations of existing mental illness as a result of conditions in
the SHU." Madrid v. Gomez, 889 F.Supp. 1146, 1265-66 (N.D.Cal. 1995).The
Madrid court determined that

23 subjecting individuals to conditions that are "very
24 likely" to render them psychotic or otherwise inflict
25 a serious mental illness or seriously exacerbate an
26 existing mental illness cannot be squared with
27 evolving standards of humanity or decency, especially
28 when certain aspects of those conditions appear to
bear little relation to security concerns. A risk this
grave—this shocking and indecent—simply has no place
in civilized society. It is surely not one "today's
society [would] choose[] to tolerate." . . . Indeed,
it is inconceivable that any representative portion of
our society would put its imprimatur on a plan to

1 an EOP level of care are not housed in any of the other three SHU
2 units for male inmates and are instead placed in PSUs.⁴⁸ Pls. Ex.
3 1200 at 12-8-1. There is no similar exclusion for female
4 inmates. See id. The Program Guide calls for provision of CCCMS
5 services in the three male SHUs other than Pelican Bay SHU. Id.

6 Plaintiffs seek an order extending the Pelican Bay SHU
7 exclusion in the Program Guide to the other four segregated
8 housing units in California's prison system.⁴⁹ Defendants oppose
9 the request, contending that (1) only inmates at the CCCMS level
10 of care are housed in SHU units; (2) appropriate mental health
11 services, consistent with Program Guide requirements, are
12 provided to inmates housed in SHUs; (3) the SHU units other than
13 Pelican Bay have natural light, less restrictive exercise yards,
14 and allow for electrical appliances, including televisions and
15 radios, in cells; and (4) "increasing data" suggests "that
16 segregation does not cause the type and severity of psychological
17 harm" described by plaintiffs' expert, Dr. Haney. Defs. Opp'n
18 (ECF No. 4712) at 29.

19
20 subject the mentally ill and other inmates described
21 above to the SHU, knowing that severe psychological
22 consequences will most probably befall those inmates.
23 Thus, with respect to this limited population of the
24 inmate class, plaintiffs have established that
continued confinement in the SHU, as it is currently
constituted, deprives inmates of a minimal civilized
level of one of life's necessities.
Id. at 1266 (quoting Helling v. McKinney, 509 U.S. 25, 113 S.Ct. 2475, 2482
(1993)).

25
26 ⁴⁸ In September 2013, 361 seriously mentally ill inmates were housed in a
psychiatric services unit (PSU). Pls. Ex. 2303.

27 ⁴⁹ California Institution for Women (CIW); California Correctional Institution
28 (CCI); California State Prison-Corcoran (COR); and California State Prison-
Sacramento (SAC).

1 First, both parties have tendered expert opinions and other
2 evidence concerning whether or not prolonged placement of
3 seriously mentally ill inmates in segregated housing units causes
4 psychological harm to those individuals. The court has already
5 found that, for seriously mentally ill inmates, placement in
6 California's segregated housing units, including both
7 administrative segregation units and SHUs, can and does cause
8 serious psychological harm, including decompensation,
9 exacerbation of mental illness, inducement of psychosis, and
10 increased risk of suicide. See Coleman v. Wilson, 912 F.Supp. at
11 1320-1321; see also Findings and Recommendations, filed June 6,
12 1994 (Dkt. 547) at 51-54. Nothing in the evidence tendered on
13 the current motions requires revisiting those findings.⁵⁰

14 ⁵⁰ The evidence tendered by the parties would certainly bear on an inquiry into
15 whether housing seriously mentally ill inmates in segregation comports with
16 contemporary values, a question not before this court at this stage of these
17 proceedings. "[T]he Eighth Amendment's prohibition of cruel and unusual
18 punishments "'draw[s] its meaning from the evolving standards of decency that
19 mark the progress of a maturing society,'"" Hudson v. McMillian, 503
20 U.S. 1, 8 (1992) (internal citations omitted). To the extent possible, courts
21 look to "'objective indicia' derived from, inter alia, history, common law,
22 and legislative action to determine whether particular punishments violate
23 contemporary values. Rhodes v. Chapman, 452 U.S. at 347 (internal citations
24 omitted). Available evidence suggests that contemporary values are moving
25 away from placement of seriously mentally ill prisoners in segregated housing,
26 particularly for periods as long as placements currently used in California.
27 See Pls. Ex. 2054 (American Psychiatric Association (APA) December 2012
28 official policy on segregation of adult inmates with serious mental illness);
Statement of Interest of the United States of America, filed August 9, 2013
(ECF No. 4736) (finding Eighth Amendment violations in the "manner in which
the Pennsylvania Department of Corrections used solitary confinement on
prisoners with serious mental illness. . . ."); Reply Austin Decl. (ECF No.
4762) at ¶¶ 36, 50 (Mississippi, Georgia, New Mexico, Colorado and Oklahoma
all exclude "most or all prisoners with diagnosed mental illnesses" from their
"punitive segregations units" and instead assign those inmates "to a
specialized mental health unit"; Ohio also requires prompt transfer of
seriously mentally ill inmates out of segregated housing.) In addition, news
reports suggest that other jurisdictions, including the New York City
Department of Correction, see
[http://online.wsj.com/news/articles/SB1000142405270230461740457930284042591008](http://online.wsj.com/news/articles/SB10001424052702304617404579302840425910088)
[8](http://www.npr.org/2014/02/23/281373188/n-y-becomes-largest-prison-system-to-curb-solitary-confinement); and New York State, see [http://www.npr.org/2014/02/23/281373188/n-y-](http://www.npr.org/2014/02/23/281373188/n-y-becomes-largest-prison-system-to-curb-solitary-confinement)
[becomes-largest-prison-system-to-curb-solitary-confinement](http://www.npr.org/2014/02/23/281373188/n-y-becomes-largest-prison-system-to-curb-solitary-confinement), are ending the
placement of mentally ill inmates in solitary confinement.

1 Defendants also contend that measuring compliance with their
2 Revised Program Guide "is an appropriate way to assess whether
3 defendants are meeting their constitutional obligations."
4 Coleman v. Brown, 938 F.Supp.2d at 972 n.30. Defendants' Revised
5 Program Guide is the "currently operative remedial plan" in this
6 action, and represents "'defendants' considered assessment, made
7 in consultation with the Special Master and his experts, and
8 approved by this court, of what is required to remedy the Eighth
9 Amendment violations identified in this action and to meet their
10 constitutional obligation to deliver adequate mental health care
11 to seriously mentally ill inmates.'" Id. at 972 (internal
12 citation omitted.) While the court has approved "[n]inety-five
13 percent of the provisions of the Revised Program Guide", id. at
14 972 & n.31, certain disputed issues were reserved for resolution
15 when the court gave that approval. See Order filed March 3, 2006
16 (ECF No. 1773). Whether the Pelican Bay SHU exclusions should be
17 extended to all SHUs was one of the disputed issues that remained
18 for resolution, as was the adequacy of mental health care
19 provided to class members housed in SHUs. See Special Master's
20 Report and Recommendations on Defendants' Revised Program Guide,
21 filed February 3, 2006 (ECF No. 1749) at 8-9. Thus, the
22 provisions of the Program Guide are not dispositive of the
23 question at bar.

24 Third, the fact that only CCCMS inmates are housed in SHU
25 units narrows the question but does not end the inquiry. The
26 Pelican Bay SHU exclusion includes almost all of the treatment
27 categories for the CCCMS level of care.⁵¹ It is also broader than

28 ⁵¹ Treatment criteria for CCCMS also include inmates diagnosed with

1 the CCCMS criteria. In relevant part, treatment criteria for the
2 CCCMS level of care include *current* symptoms of specified Axis I
3 serious mental disorders, Pls. Ex. 1200 at 12-3-4, while the
4 Pelican Bay SHU exclusion extends to inmates who currently have
5 symptoms of those disorders or who have had such symptoms "within
6 the preceding three months." Id. at 12-8-2.

7 Resolution of the question at bar turns, then, on two
8 disputed issues: whether the conditions of confinement in other
9 SHU units are materially different from the conditions of
10 confinement in the Pelican Bay SHU, and whether the mental health
11 care provided in other SHU units is constitutionally sufficient.

12 As discussed above, the conditions of SHU confinement
13 include both the physical conditions of the housing units and the
14 exercise yards, and the restrictions that attach to
15 classification for SHU housing. The restrictions are the same
16 for all SHU inmates; that is part of the classification process.
17 Thus, it is undisputed that the highly restrictive programming in
18 the Pelican Bay SHU is the same in all of California's SHU units.
19 All SHU inmates are confined to their cells for approximately
20 twenty-three hours per day. Haney Decl. (ECF No. 4581) at ¶ 23.

21 The primary difference between the Pelican Bay SHU and the
22 other SHU units is that the cells in the Pelican Bay SHU "are
23 windowless and do not face other cells across the pod, and the
24 'yards' consist of concrete enclosed spaces rather than cages."

25
26 exhibitionism, which is not included in the Pelican Bay exclusions. See Pls.
27 Ex. 1200 at 12-3-5, 12-8-1, 12-8-2. However, SHU inmates who receive a rules
28 violation report for "Indecent Exposure or Intentionally Sustained
Masturbation with Exposure" are referred for a mental health assessment which
must "be completed within 24 hours to rule-out decompensation and/or
intoxication." Id. at 12-8-6.

1 Haney Decl. (ECF No. 4581) at ¶ 18; see also Allison Decl. (ECF
2 No. 4713) at ¶ 26.⁵²

3 Only CCCMS care is provided in SHU units. Pls. Ex. 1200 at
4 12-8-1. Male inmates requiring EOP level of care are referred to
5 a psychiatric services unit (PSU). Id. at 12-8-1, 12-8-10. The
6 Program Guide provides that “[f]emale inmate-patients [who
7 require an EOP level of care] will continue to be treated in SHU
8 . . . until a PSU for female inmate-patients is established.”
9 Id. at 12-8-11, 12-8-12. There is currently a 20 bed PSU for
10 female inmates at California Institution for Women (CIW). See
11 Ex. A to Pls. March 3, 2014 Request for Judicial Notice (ECF No.
12 5093), at 14.

13 As discussed above, this question goes to the heart of the
14 tension between legitimate penological goals of prison
15 institutions, including the need for order and discipline, and
16 the requirements of the Eighth Amendment. The record before the
17 court amply demonstrates that there are many seriously mentally
18 ill inmates at the CCCMS level of care who cannot be housed in
19 any SHU in California without running afoul of the Eighth
20 Amendment. It is not clear that this is true for all inmates at
21 the CCCMS level of care. For that reason, the court will not at
22 this time require the blanket exclusion requested by plaintiffs.
23 Instead, defendants will be prohibited from housing any seriously
24 mentally ill inmate at any SHU in California unless that inmate’s

25
26 ⁵² There is minimal natural light in the Pelican Bay SHU: “A skylight in each
27 pod does allow some natural light to enter the tier area adjacent to the
28 cells. . . . Inmates can spend years without ever seeing any aspect of the
outside world except for a small patch of sky.” Madrid v. Gomez, 889 F.Supp.
1146, 1228, 1229 (N.D.Cal. 1995).

1 treating clinician certifies that (1) the inmate's behavior
2 leading to the SHU assignment was not the product of mental
3 illness and the inmate's mental illness did not preclude the
4 inmate from conforming his or her conduct to the relevant
5 institutional requirements; (2) the inmate's mental illness can
6 be safely and adequately managed in the SHU to which the inmate
7 will be assigned for the entire length of the SHU term; and (3)
8 the inmate does not face a substantial risk of exacerbation of
9 his or her mental illness or decompensation as a result of
10 confinement in a SHU. In addition, defendants will be prohibited
11 from returning any seriously mentally ill inmate to any SHU unit
12 if said inmate has, following placement in a SHU, required a
13 higher level of mental health care.⁵³

14 For all of the foregoing reasons, plaintiffs' motions will
15 be granted in part.

16 V. Standards for Injunctive Relief

17 The court does, by this order, direct specific action by
18 defendants. In this court's view, the orders contained herein
19 are in aid of the remedy required by the court's 1995 order. To
20 the extent that the requirements of 18 U.S.C. §3626(a)(1) may
21 apply, this court finds that the orders contained herein are
22 narrowly drawn, extend no further than necessary to correct the
23 Eighth Amendment violations found at the trial of this matter and
24

25
26 ⁵³ Plaintiffs have requested that defendants be ordered to develop treatment-
27 based disciplinary programs for Coleman class members. Given the necessity of
28 the restrictions imposed by this order, defendants may want to seriously
consider voluntarily adopting such programs as this may provide a more
straightforward means of planning for appropriate housing and treatment of
mentally ill offenders.

1 still ongoing, and are the least intrusive means to that end.

2 See 18 U.S.C. § 3626(a)(1)(A).

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

4 1. Plaintiffs' May 29, 2013 motion for enforcement of court
5 orders and affirmative relief related to use of force and
6 disciplinary measures (ECF No. 4638) is granted in part as
7 follows:

8 a. Defendants shall work under the guidance of the
9 Special Master to revise their use of force policies and
10 procedures as required by this order. Said revisions shall be
11 completed within sixty days from the date of this order.

12 b. The Special Master shall report to the court within
13 six months whether defendants have adequately implemented the RVR
14 policies and procedures agreed to in 2011.

15 c. Defendants shall work with the Special Master on a
16 timeline for completion of their review of the use of management
17 status so that this practice can be reviewed by the Special
18 Master as part of his review of the implementation of defendants'
19 RVR policies and procedures.

20 2. Plaintiffs' May 6, 2013 motion for enforcement of
21 judgment and affirmative orders related to segregated housing
22 (ECF No. 4580) is granted in part as follows:

23 a. Within thirty days from the date of this order
24 defendants shall file a plan to limit or eliminate altogether
25 placement of class members removed from the general population
26 for non-disciplinary reasons in administrative segregations units
27 that house inmates removed from the general population for
28 disciplinary reasons. Defendants shall be prepared to fully

1 implement the plan within thirty days thereafter. Defendants
2 shall commence forthwith to reduce the number of Coleman class
3 members housed for non-disciplinary reasons in any administrative
4 segregation unit that houses disciplinary segregation inmates.
5 Commencing sixty days from the date of this order, defendants
6 will be prohibited from placing any class members removed from
7 the general population for non-disciplinary reasons for more than
8 seventy-two hours in administrative segregations units that house
9 inmates removed from the general population for disciplinary
10 reasons.

11 b. Defendants shall work under the guidance of the
12 Special Master to develop a protocol for administrative
13 segregation decisions, including, as appropriate, a plan for
14 alternative housing, that will preclude placement of any Coleman
15 class member in existing administrative segregation units when
16 clinical information demonstrates substantial risk of
17 exacerbation of mental illness, decompensation, or suicide from
18 such placement.

19 c. Defendants shall forthwith provide to the court and
20 the Special Master monthly reports on whether each EOP ASU hub
21 meets Program Guide requirements for an EOP ASU level of care.
22 Commencing sixty days from the date of this order, defendants
23 shall not admit any Coleman class member at the EOP level of care
24 to any EOP ASU hub that has failed to meet or exceed Program
25 Guide requirements for a period of more than two consecutive
26 months. Commencing sixty days from the date of this order,
27 defendants shall not place any class member at the EOP level of
28 care in any administrative segregation unit during any period in

1 which there are an insufficient number of EOP Ad Seg Hub beds
2 available unless failure to remove the inmate from the general
3 population presents an imminent threat to life or safety.

4 d. Within sixty days from the date of this order
5 defendants shall file a revised policy concerning strip searches
6 in EOP ASU hubs.

7 e. Defendants are prohibited from housing any class
8 member at any SHU in California unless that class member's
9 treating clinician certifies that (1) the behavior leading to the
10 SHU assignment was not the product of mental illness and the
11 inmate's mental illness did not preclude the inmate from
12 conforming his or her conduct to the relevant institutional
13 requirements; (2) the inmate's mental illness can be safely and
14 adequately managed in the SHU to which the inmate will be
15 assigned for the entire length of the SHU term; and (3) the
16 inmate does not face a substantial risk of exacerbation of his or
17 her mental illness or decompensation as a result of confinement
18 in a SHU. In addition, defendants are prohibited from returning
19 any seriously mentally ill inmate to any SHU unit if said inmate
20 has at any time following placement in a SHU required a higher
21 level of mental health care.

22 DATED: April 10, 2014.

23
24
25 
26 LAWRENCE K. KARLTON

27 SENIOR JUDGE
28 UNITED STATES DISTRICT COURT