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12 **UNITED STATES DISTRICT COURT**
 13 **EASTERN DISTRICT OF CALIFORNIA**
 14 **SACRAMENTO DIVISION**

16 RALPH COLEMAN, et al.,
 17 Plaintiffs,
 18 v.
 19 GAVIN NEWSOM, et al.
 20 Defendants.

Case No. 2:90-CV-00520- KJM-DB

**DEFENDANTS’ REPLY TO PLAINTIFFS’
 RESPONSE TO DEFENDANTS’
 ROADMAP TO REOPENING**

Judge: Hon. Kimberly J. Mueller

22 **I. INTRODUCTION**

23 Defendants’ Roadmap to Reopening (“Roadmap”), an updated plan created by Defendants
 24 to help plan for and support their own statewide operational needs, and provided to the Court at its
 25 request, is not an exhaustive manual, nor is it meant to be. Rather, the Roadmap provides a
 26 framework that is intentionally flexible and subject to change as the global pandemic and related
 27 public health guidance continues to evolve. The framework is designed to adapt and apply to the
 28 myriad and individual challenges that the institutions face as a result of dissimilar physical plants,

1 staffing issues, program demands, and COVID impacts, among other factors. In order to keep the
2 state’s correctional institutions safe for residents and staff while also working toward resuming
3 normal operations, Defendants will (and must) continue to rely upon the best science available and
4 the guidance provided by public health experts, including the *Plata* Receiver’s experts.
5 Defendants’ Roadmap thoughtfully balances these priorities. Plaintiffs, by contrast, seek relief not
6 grounded in any public health expertise and without any showing that the framework set forth
7 within the Roadmap is unconstitutional or would otherwise lead to the unconstitutional delivery of
8 mental health care in the midst of the ongoing pandemic. Plaintiffs’ response to the Roadmap
9 (“Response”) is unsupported by law, procedurally improper, and requests relief the Court cannot
10 provide.

11 **II. ARGUMENT**

12 **A. PLAINTIFFS FAIL TO SHOW THAT THE ROADMAP IS DEFICIENT**

13 During the March 25, 2021 status conference, the Court ordered Defendants to file their
14 Roadmap, “recognizing that it may be a milestone along the way to full reopening.” (ECF No.
15 7111 at 44:25-45:2.)¹ Accordingly, on April 22, 2021, Defendants filed their Roadmap as well as
16 their updated Mental Health COVID-19 Emergency Plan Tier Chart (“Tier Chart”), which
17 provides helpful context and a more detailed explanation of specific actions taken during each
18 phase in key areas such as inpatient referrals, suicide prevention, and provision of medical
19 treatment. (Exhibits A & B to ECF No. 7135.) In response, Plaintiffs assert that the Roadmap is
20 vague and lacks enforceable benchmarks. They also cherry-pick particular guidelines in an
21 attempt to undermine the Roadmap by omitting critical context. But Plaintiffs do not demonstrate
22 that the Roadmap is deficient, or that *Coleman* class members will be subject to the
23 unconstitutional delivery of mental health care as a result of Defendants’ implementation of the
24 Roadmap and continuing response to the ever changing COVID-19 pandemic.

25 Plaintiffs’ omissions are critical and misleading. For instance, Plaintiffs complain that the
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27 ¹ The Roadmap filed on April 22, 2021 is an updated plan, indicative of Defendants’ efforts to
28 continually update their plan as public health guidance evolves. The first version of this plan was
filed on September 15, 2020. (ECF No. 6866 at 3, 34, 40.)

1 updated Tier Chart still allows patients to be limited to in-cell activities and to not be offered
2 groups depending on space, staffing, and quarantine or isolation status. (ECF No. 7141 at 5:7-10.)
3 They argue that these restrictions depart from the Program Guide, and therefore “likely fall below
4 constitutional minima.” (*Id.* at 5:17-18.) Yet, this argument ignores that this guidance applies
5 solely to Tier-1 facilities² – meaning, those facilities or institutions facing an active COVID-19
6 outbreak. (Exhibits B to ECF No. 7135.) Plaintiffs seem to take issue with the fact that
7 Defendants intend to follow the advice of public health experts who understand that restricting
8 movement and contact is required to contain outbreaks. Moreover, Plaintiffs offer no evidence
9 that Defendants should deviate from the Tier 1 guidelines during an outbreak, nor do they cite any
10 public health guidance conflicting with these restrictions. Instead, Plaintiffs enjoy the luxury of
11 advocating for fewer restrictions while shouldering none of the responsibility when an outbreak
12 occurs.

13 Plaintiffs’ arguments are also not tethered to current public health guidance, nor do
14 Plaintiffs submit any public health testimony or evidence in support of their position. Specifically,
15 Plaintiffs assert that the Roadmap should provide increased treatment, programming, and out-of-
16 cell time for vaccinated residents. (ECF No. 7141 at 4:13-17.) Of course, Defendants also believe
17 that increased vaccination rates will make it possible to continue to progress toward resumption of
18 normal operations. However, Plaintiffs’ argument is based on an assumption that vaccines
19 invariably prevent the spread of COVID-19 and all of its variants, an assumption not yet supported
20 by decisive public health data as of April 22, 2021, when the Roadmap was filed. As this Court
21 observed at the March 25, 2021 status conference, the Roadmap remains a flexible framework, not
22 a static rulebook, and will continue to be updated and evolve with public health guidance.

23 In short, Plaintiffs’ Response amounts to nothing more than a wish-list that not only is
24 largely divorced from expert public health guidance, but also ignores the current realities
25 Defendants face in the midst of an ongoing pandemic.

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27 ² Both the Roadmap and Tier plans allow different facilities or yards within the same institution to
28 be in different tiers/phases. Thus, the plans afford flexibility not only to the overall institution, but
to the discrete programs within them as well.

1 **B. PLAINTIFFS’ REQUEST IS PROCEDURALLY IMPROPER AND THE**
2 **COURT LACKS AUTHORITY TO GRANT THE REQUESTED RELIEF IN**
3 **ANY EVENT**

4 Despite no showing of deficiency in the Roadmap, Plaintiffs seek an order requiring
5 Defendants to work with Plaintiffs, the Special Master, and “a group of public health experts” to
6 set static benchmarks and “dates certain” for safe resumption of “Program Guide level mental
7 health care.” Plaintiffs’ request is procedurally improper and seeks relief that the Court lacks the
8 authority to provide.

9 1. Plaintiffs must seek relief via noticed motion, not in a responsive filing

10 Parties requesting relief from the court must do so by filing a motion. Fed. R. Civ. P. 7(b).
11 All motions *must specify the grounds supporting the motion. Id.* (emphasis added). Here,
12 Plaintiffs request relief from the Court not through an affirmative motion, but rather, in their
13 Response to the Roadmap that Defendants prepared for their own operational purposes and only
14 filed at the Court’s request. Plaintiffs’ attempt to circumvent the basic rules of civil procedure
15 should be disregarded.

16 2. Plaintiffs’ request lacks specific supporting grounds needed for relief

17 Critically, Plaintiffs also fail to specify grounds supporting their request for relief—and
18 instead only vaguely reference the purported “constitutional floor” set by the Program Guide.
19 (ECF No. 7141 at 3 and 4.) Plaintiffs’ attenuated argument seems to be that the Program Guide
20 sets the constitutional standard for care and that Defendants’ Roadmap lacks measurable criteria to
21 ensure compliance with the Program Guide. This argument fails for several reasons.

22 First, Plaintiffs fail to show that the Roadmap and the care outlined within it are
23 constitutionally deficient, as explained above. Further, there is no showing that creating the
24 Roadmap, much less instituting static benchmarks in the Roadmap is required to ensure
25 constitutional compliance. Plaintiffs’ reliance on language from an April 2020 Court order
26 requiring Defendants to file a plan on COVID-19 prevention (at the beginning of the pandemic) is
27 misplaced. (ECF No. 7141 at 1.) Once again, Plaintiffs rely on language taken out of context, and
28 which was never intended to apply to a document that was not even contemplated at the time the
order issued. They also ignore that the purpose of the Roadmap is to provide CDCR institutions

1 with a framework looking toward resuming operations during an ongoing pandemic. Because
2 each institution has different physical plants, staffing challenges, program demands, and COVID
3 impacts, the Roadmap enumerates specific guideposts and provides general direction on provision
4 of services while also allowing flexibility to individual institutions in recognition of the unique
5 and disparate challenges they face as a result of the pandemic. Plaintiffs’ challenges to the
6 Roadmap, in part, therefore misapprehend its very purpose.

7 Further, Plaintiffs’ requested relief ignores that Defendants have consulted with the *Plata*
8 Receiver and public health experts since the outset of the COVID-19 pandemic and will continue
9 to do so to address the changing circumstances it presents. Indeed, the Roadmap incorporates
10 input from the *Plata* Receiver and public health experts and has been updated to reflect changes in
11 public health guidance. Like the COVID-19 pandemic, Defendants’ provision of care will
12 continue to evolve to keep staff and residents safe. Plaintiffs’ simple disagreement with the
13 parameters set forth in the Roadmap is not a basis on which to require Defendants to disregard the
14 advice of their public health experts in favor of a more rigid framework for which Plaintiffs
15 advocate. Moreover, Plaintiffs’ focus on the purported lack of enforceable static benchmarks with
16 “dates certain for completion” simply highlights Plaintiffs’ misunderstanding about how these
17 institutions function to keep people safe during an ever-evolving global pandemic—the end of
18 which has no “date certain.”

19 3. The Court lacks authority to provide Plaintiffs’ requested relief because
20 Plaintiffs fail to show a violation of *Coleman* members’ Federal rights or
21 that the relief they seek is narrowly drawn as required by the Prison
Litigation Reform Act

22 In order for the Court to order prospective relief, the Prison Litigation Reform Act
23 (“PLRA”) requires evidence of a violation of Plaintiffs’ federal rights and a showing that the
24 requested relief is “narrowly drawn” and “extends no further than necessary to correct the
25 violation of the Federal right” 18 U.S.C. § 3626(a)(1)(a). Here, Plaintiffs make no showing
26 that the framework provided by the Roadmap would result in the unconstitutional delivery of
27 mental health care to *Coleman* class members, and thus Plaintiffs do not meet the threshold
28 requirement necessary to obtain relief. Without first establishing a violation of federal law, it is

1 impossible to determine whether the relief Plaintiffs seek is the most narrowly drawn and least
2 intrusive form of relief.

3 Further, even if Plaintiffs could show some violation (they cannot), the relief they request
4 is intrusive, broad, and vague. “ ‘States have a strong interest in the administration of their
5 prisons[,]’ ” and “ ‘federal courts must tread lightly when it comes to questions of managing
6 prisons, particularly state prisons[.]’ ” *Frazier v. Kelley*, 2020 WL 2110896 (E.D. Ark, May 4,
7 2020), at *9 (weighing a request for relief in the form of offering inmates COVID-19
8 vaccinations), *citing Woodford v. Ngo*, 548 U.S. 81, 94 (2006). The “Court should approach
9 intrusion into the core activities of the state’s prison system with caution.” *Frazier* at *10. But
10 here, Plaintiffs seek reformation of the entire Roadmap and establishment of benchmarks and
11 related deadlines to be agreed upon by the parties, the Special Master, and some unknown public
12 health experts. The relief Plaintiffs seek is precisely the type of needless intrusion the Supreme
13 Court has consistently cautioned against on numerous occasions dating back nearly 50 years. *See*,
14 *e.g., Turner v. Safley*, 482 U.S. 78, 85 (1987) (“where a state penal system is involved, federal
15 courts have ... additional reason to accord deference to the appropriate prison authorities”);
16 *Meachum v. Fano*, 427 U.S. 215, 229 (1976) (“Federal courts do not sit to supervise state prisons,
17 the administration of which is of acute interest to the States”); *Preiser v. Rodriguez*, 411 U.S. 475,
18 491-92 (1973) (“It is difficult to imagine an activity in which a State has a stronger interest, or one
19 that is more intricately bound up with state laws, regulations, and procedures, than the
20 administration of its prisons.”). Defendants’ management of its safety protocols and programming
21 in the midst of a global pandemic must be accorded deference, despite Plaintiffs unsupported
22 protestations to the contrary. Under these circumstances, where there is neither a showing that the
23 Roadmap is deficient, nor any evidence of a federal violation, and where the requested relief is
24 broad and needlessly intrusive, the Court must disregard Plaintiffs’ request for relief.

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1 **III. CONCLUSION**

2 Because Plaintiffs fails to articulate a viable basis for relief, and fail to properly request
3 such relief, Defendants respectfully request that this Court disregard Plaintiffs' request for relief
4 related to Defendants' Roadmap.

5 DATED: May 10, 2021

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