

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

Pursuant to court order, on September 24, 2013 the Special Master filed a Report on the Salinas Valley Psychiatric Program (SVPP) (Report) (ECF No. 4830). The Report contains numerous findings concerning the delivery of mental health care to class members at SVPP. Based on those findings, the Special Master makes six recommendations for orders to address inadequacies identified in the Report. Defendants have filed objections to and a motion to strike or modify the Report (ECF No. 4868). Plaintiffs have filed a response to the Report and a request for additional recommendations and orders (ECF No. 4867). Pursuant

1 to Fed. R. Civ. P. 53(f), the matters objected to are reviewed de
2 novo.¹

3 A. Defendants' General Objections

4 Defendants interpose two general objections to the Report
5 and a number of specific objections to the recommendations
6 contained therein. First, defendants contend that this court's
7 July 11, 2013 order (ECF No. 4688) requiring the Special Master
8 to issue the report was improper because it "contravenes the
9 plain language" of restrictions contained in 18 U.S.C. §
10 3626(a)(1)(A) for prospective injunctive relief. Defs. Objs.
11 (ECF No. 4868) at 3. Defendants renew their contention that the
12 court could not order the Special Master to report to the court
13 on care provided at SVPP, arguing (1) the Department of State
14 Hospitals (DSH) was not a party to this case at the time of the
15 original trial in 1995; (2) DSH care has "never been subject to
16 the Special Master's supervisory powers" since the remedial phase
17 of this action began; (3) the court's order "improperly imputed
18 liability to DSH for the constitutional violations found against
19 different Defendants in 1995;" and (4) the court did not, in its
20 July 2013 order, find that DSH was violating the Constitution in
21 its provision of hospital care to members of the plaintiff class.
22 Id. at 3. The court already considered and rejected these
23 contentions. See Order filed July 11, 2013 (ECF No. 4688) at 4-9;
24 Order filed September 5, 2013 (ECF No. 4784) at 2-5. A few
25 points bear repeating.

26 ¹ All reports provided by the Special Master to the parties in
27 accordance with the Order of Reference filed December 11, 1995
28 (Doc. No. 640) are reviewed under the standards set forth in that
order. The Report at bar was filed directly with the court.

1 First, for the reasons explained in the court's September 5,
2 2013 Order, the provisions of 18 U.S.C. § 3626(a)(1)(A) do not
3 apply to the court's order directing the Special Master to
4 monitor inpatient mental health programs. See Order filed
5 September 5, 2013 (ECF No. 4784) at 2-3. Monitoring by a Special
6 Master is not "relief" within the meaning of that statute. See
7 id.

8 Second, the monitoring ordered by this court in the July 11,
9 2013 order is necessary to a complete remedy in this action. In
10 1995, this court found the Governor of the State of California
11 and the California Department of Corrections and Rehabilitation
12 defendants in violation of their Eighth Amendment obligation to
13 provide seriously mentally ill inmates with ready access to
14 constitutionally adequate mental health care. See Coleman v.
15 Wilson, 912 F.Supp. 1282 (E.D.Cal. 1995). The California
16 Department of Corrections and Rehabilitation (CDCR) defendants
17 are the custodians of the members of the plaintiff class and have
18 the primary legal responsibility for providing constitutionally
19 adequate mental health care to members of the plaintiff class.²
20 See In re Estevez, 165 Cal.App.4th 1445, 1463 (Cal. App. 5 Dist.
21 2008) (even where federal receiver appointed, "the state, and
22 through its appointed representative, the warden, cannot abdicate
23

24 ² The plaintiff class consists of "all inmates with serious
25 mental disorders who are now, or who will in the future, be
26 confined within" the CDCR. July 23, 1999 Order & Stip. & Order
27 Amending Plaintiff Class & Application of Remedy appended thereto
28 at 2. All members of the plaintiff class are in the legal
custody of the CDCR and, pursuant to state regulation, "remain
under the jurisdiction" of CDCR when housed in Department of
State Hospitals. 15 C.C.R. § 3369.1(c).

1 its constitutional responsibility to provide adequate medical
2 care, concomitant with which is the duty to assure said care is
3 not dispensed without any regard for the effect on the prison
4 system as a whole.”)

5 The remedial phase began with appointment of a Special
6 Master, who was tasked first with working with defendants to
7 develop a plan to remedy the “gross systemic failures in the
8 delivery of mental health care” and thereafter with monitoring
9 defendants’ implementation of that plan. Coleman v. Brown, ____
10 F.Supp.2d ____, 2013 WL 1397335 (E.D.Cal. Apr. 5, 2013), slip op.
11 at 1. The remedial plan, known as the Revised Program Guide, was
12 developed over a decade of effort and most of its provisions were
13 given final approval by this court in 2006. See id. at 12.³ The
14 Revised Program Guide includes provisions governing delivery of
15 inpatient hospital care, and provides in relevant part:

16 The California Department of Corrections and
17 Rehabilitation (CDCR) is responsible for
18 providing acute and intermediate inpatient
19 care, in a timely manner, to those CDCR
20 inmates clinically determined to be in need
21 of such care. CDCR currently maintains a
22 contract with the California Department of
23 Mental Health (DMH) to provide acute and
24 long-term intermediate inpatient mental
25 health care to inmate-patients.

26 Program Guide, 2009 Revision, at 12-6-1 (footnote added).

27 Delivery of constitutionally adequate inpatient mental
28 health care to class members is a necessary part of complete

26 ³ The version of the remedial plan under which defendants are
27 currently operating is identified as the Mental Health Services
28 Delivery System Program Guide, 2009 Revision. It will be
referred to herein as the Revised Program Guide or the Program
Guide; all citations will be to the 2009 Revision.

1 remediation of systemic Eighth Amendment violations in the
2 delivery of prison mental health care in California and full
3 compliance with defendants' own remedial plan. At all relevant
4 times in the remedial phase of this action CDCR has contracted
5 with DMH to provide most of the inpatient hospital care for class
6 members, and the Director of DMH has therefore been joined in
7 this action as a necessary party to the remedy.⁴ However, as
8 this court has previously explained, that contractual arrangement
9 does not relieve the CDCR defendants in this action of their
10 constitutional obligation to provide ready access to adequate
11 hospital care, which also runs to DMH and its successor the
12 Department of State Hospitals (DSH) as long as it maintains a
13 contract with that agency to provide inpatient care to members of
14 the plaintiff class. See Order filed July 11, 2013 (ECF No.
15 4688) at 8 (citing West v. Atkins, 487 U.S. 42, 56 (1988)).

16 Finally, the court rejects defendants' suggestion that a
17 separate finding of constitutional violations in the delivery of
18 inpatient care is required to support the monitoring ordered in
19 the July 11, 2013 order. The July 11, 2013 order arose in the
20 context of ongoing remediation of systemic Eighth Amendment
21 violations in the delivery of constitutionally adequate mental
22 health care to California's seriously mentally ill prisoners
23 which has been monitored by a Special Master since 1995 and is
24 part of that remedial process. The order is also based on

25
26 ⁴ The Department of State Hospitals (DSH) is the current name for
27 the state agency that provides inpatient mental health hospital
28 care for CDCR inmates and was referred to as DMH earlier in this
remedial process. See Twenty-Fifth Round Monitoring Report filed
January 18, 2013 (ECF No. 4298) at 33 n.11.

1 significant and troubling evidence of serious deficiencies in the
2 delivery of inpatient care to class members. See Order filed
3 September 5, 2013 (ECF No. 4784) at 4-5 (quoting Order filed July
4 11, 2013 (ECF No. 4688) at 10-11). Nothing further is required.

5 For the foregoing reasons and those set forth in this
6 court's July 11, 2013 and September 5, 2013 orders (ECF Nos. 4688
7 and 4784), defendants' first general objection is overruled.

8 Defendants' second general objection is that the Special
9 Master's recommendations "are not tethered to constitutional
10 standards." Defs. Objs. (ECF No. 4868) at 3. This objection is
11 frivolous. The Special Master's recommendations focus on (1)
12 staffing levels; (2) the adequacy of treatment provided at SVPP,
13 particularly individualized and group therapy; (3) the impact of
14 so-called Orientation or Cuff Status on timely access to adequate
15 care; (4) delays in transfer to SVPP; and (5) timely provision of
16 basic necessities including clean clothing, bedding, and towels.
17 Report (ECF No. 4830) at 44-45. The recommendations are grounded
18 in the fundamental requirement that defendants provide a "'system
19 of *ready* access to *adequate* [mental health care, '" Coleman v.
20 Brown, ___ F.Supp.2d ___, 2013 WL 1397335, slip op. at 16
21 (quoting Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982)).
22 All but the last directly concern several of the components
23 required for such a system, components which have been repeatedly
24 identified by this court. See id.⁵ Defendants' second general
25 objection is overruled.

26 ⁵ The last recommendation implicates the fundamental Eighth
27 Amendment requirement that prison institutions provide inmates in
28 their care with adequate clothing and sanitation, see Hoptowit,
682 F.2d at 1246, as well as the adequacy of conditions that

1 B. Defendants' Specific Objections

2 1. Staffing/Programming

3 The Special Master's first recommendation is that SVPP be
4 directed to fill remaining staffing vacancies, giving priority to
5 filling psychiatry, psychology, and social work positions, and
6 consider modifying its planned staff-to-patient ratio of 1:35.
7 Report (ECF No. 4830) at 45. His second is that SVPP "be
8 directed to increase significantly the amount and quality of
9 individualized and group therapy provided." Id. The two are
10 interrelated: the Special Master reports that

11 [c]urrently, SVPP does not have the capacity
12 or the resources to provide basic therapeutic
13 and rehabilitative mental health support,
14 services, and treatment to its inpatients in
15 a coordinated, comprehensive, and
16 individualized manner that is consistent with
17 accepted standards for forensic and other
18 hospital settings. The 1:35 clinical staffing
19 ratio adopted by SVPP is inadequate for
20 individual clinician caseloads as well as for
admissions units and treatment teams. Clinician-to-patient staffing ratios in the field of inpatient psychiatric programs are more customarily 1:15 for admissions units, which conduct initial assessments and stabilization of newly arrived patients, and 1:25 for treatment units.

21 Report (ECF No. 4830) at 10. See also Report at 11 ("Staff often
22 acknowledge the need for improvement in some of the areas
23 identified by the monitor's expert, as discussed below, but they
24 cited the shortage of staffing resources as a major obstacle to
25 implementing them.")

26
27
28 directly impact the care of inmate-patients housed at SVPP.

1 Defendants raise a number of objections to these
2 recommendations and the findings on which they are based.
3 Defendants' objections and the declaration in support thereof
4 contain little if any substantive disagreement with the findings
5 of the Special Master concerning staffing levels at SVPP during
6 the period monitored by the Special Master.⁶ Significantly, in
7 an apparent acknowledgement that more staff is needed, defendants
8 represent that SVPP "is already undertaking dramatic measures to
9 recruit staff." Defs. Objs. (ECF No. 4868) at 5. Defendants
10 assert that these efforts make a court order unnecessary. Id.

11 As noted above, the Special Master's recommendation
12 concerning staffing levels is directly related to his
13 recommendation to increase the quantity and quality of
14

15 ⁶ Defendants presently have a 1:35 staff to patient ratio for
16 psychiatrists, psychologists, social workers, and rehabilitation
17 therapists. See Report (ECF No. 4830) at 9. Defendants do not
18 object to the Special Master's finding that social workers'
19 caseloads average approximately 40 patients. See id. at 8.
20 Defendants agree with the Special Master's finding that there
21 were 8 psychologists on staff at SVPP as of August 9, 2013; they
22 do not address his finding that one was due to transfer to the
23 Correctional Health Care Facility (CHCF) in October 2013.
24 Defendants do object to the Special Master's finding that as of
25 August 22, 2013, there were five line psychiatrists and one chief
26 psychiatrist, with contractors providing "some additional hours
27 of coverage." Report at [cit.] Defendants' evidence, which
28 consists of the declaration of Pam Ahlin, is insufficient to
contravene the Special Master's finding. Ms. Ahlin avers that on
August 22, 2013 there were eight psychiatrists on staff "not
including the second positions worked by 2 full-time
psychiatrists." It is unclear whether defendants are suggesting
that there were eight psychiatrists, two of whom were working
second positions, or something else. In any event, defendants'
evidence is insufficient to contradict the Special Master's
findings concerning the number of psychiatrists on staff at SVPP
in August 2013.

1 individualized and group therapy at SVPP. The latter
2 recommendation is based on several findings, including:

- 3 □ "The amount of weekly group therapy per patient
4 was too limited for the intermediate level of
5 care, at only four to six hours per week on
6 average";
- 7 □ "The quality of group treatment was inconsistent
8 and ranged from very poor to excellent";
- 9 □ "Psychologists appeared to have an overly-narrow
10 role and to be underutilized";
- 11 □ "Individualized therapy by psychologists and
12 social workers was not provided regularly and
13 occurred rarely for most patients, even when
14 prescribed by an IDTT,⁷ when clinically indicated,
15 or when requested by patients."

16 Id. at 4. Defendants interpose a number of objections to the
17 findings concerning the quantity and quality of therapy provided,
18 none of which contravene in any significant way the serious
19 inadequacies reported by the Special Master.⁸ Moreover, as with

20 ⁷ IDTT stands for Interdisciplinary Treatment Team. See Report
21 (ECF No. 4830) at 12.

22 ⁸ Defendants first object that refusal to attend group therapy
23 can be and is a basis for transfer of an inmate to SVPP which
24 "explains, in part, the group therapy refusal rate of inmate-
25 patients who have recently transferred to" SVPP. Defs. Objs.
(ECF No. 4868) at 7. This objection is not responsive to the
Special Master's findings concerning the insufficient amount of
therapy available at SVPP.

26 Defendants next object that the Special Master's comparison
27 of therapy received by inmate-patients at SVPP with the minimum
28 number of therapy hours required for the Enhanced Outpatient
(EOP) level of care is "inaccurate and unfair." Id. Defendants
contend the Special Master should have "counted the number of
group hours offered by [SVPP] and added to that number the hours

1
2 of individual therapy, recreational and occupational therapy with
3 a clinician, and work and educational programs offered to inmate-
4 patients." Id. Defendants also object that the Special Master
5 does not explain how he arrived at the finding that weekly group
6 therapy at SVPP is limited to an average of four to six hours per
7 week, and they contend their evidence filed in opposition to
8 plaintiffs' motion concerning access to inpatient care
9 "demonstrated provision of group therapy at a significantly
10 higher rate." Id. These objections are without merit.
11 Defendants are correct that the "[t]en hours per week of
12 scheduled structured therapeutic activities" required at the EOP
13 level of care includes more than just group therapy. See Program
14 Guide, 2009 Revision, at 12-4-9, 10. However, the Special
15 Master's Report includes findings about other therapy and
16 programming provided at SVPP, including individual therapy and
17 "solo treatment activity/solo programming", which show that these
18 other forms of therapy and programming do not materially increase
19 the quantity or quality of programming offered to inmate-patients
20 at SVPP. See Report (ECF No. 4830) at 18-22. Finally, the
21 evidence cited by defendants about the amount of group therapy
22 offered at SVPP is from March and April 2013, see Dec. Gaither
23 (ECF No. 4602) at ¶¶19-20, while the Special Master's report is
24 based on findings from three visits between July 31 and August
25 22, 2013. Report at 2, 14-15. Defendants have presented no
26 evidence of therapeutic program hours from July or August 2013
27 that calls into question the Special Master's findings.

28 Finally, defendants suggest that the Special Master should
have based his recommendation on therapy hours offered, not hours
received, because the Program Guide only requires that EOP
inmate-patients be offered ten hours of therapy, not that they
receive ten hours of therapy. Defs. Objs. (ECF No. 4868) at 7;
see Program Guide at 12-4-8. Had defendants presented evidence
to the Special Master or to this court that they were in fact
offering sufficient therapeutic programming at SVPP to meet
therapeutic requirements for an ICF level of care (which
presumably in most instances will over the course of a
hospitalization, as the Special Master observes, exceed that
required for EOP inmate-patients), this objection might merit
further consideration. However, defendants represent that they
have only begun to implement a program for tracking individual
and group therapy hours, see Decl. of Ahlin at ¶ 16, and they
have not presented any data from that tracking system concerning
therapy hours offered. Absent such evidence, however, this
objection is overruled.

The Special Master found significant deficiencies in the
quantity and quality of therapy offered to inmate-patients at
SVPP. Defendants acknowledge that SVPP "is in the process of

1 staffing levels defendants also represent that SVPP "is in the
2 process of improving its group programming," "acknowledge that
3 changes to group therapy can be and is" being made, and that they
4 have been developing and implementing a program for tracking
5 individual and group therapy hours. Defs. Objs. (ECF No. 4868)
6 at 7-8.

7 After de novo review, the court will adopt in full the
8 Special Master's factual findings concerning staffing levels and
9 therapy provided at SVPP. However, in light of defendants'
10 representations concerning their efforts to recruit and hire
11 staff and to improve the quantity and quality of therapy provided
12 to inmate-patients and SVPP and the fact that the Special Master
13 is continuing to monitor SVPP and other DSH inpatient programs
14 pursuant to the July 11, 2013 order, the court will not make
15 specific orders concerning staffing or therapy at this time.
16 Orders concerning staffing and the quantity and quality of
17 therapy will be deferred pending a further report and
18 recommendations from the Special Master.

19 2. Orientation Status/Cuff Status

20 The Special Master recommends that SVPP "be directed to
21 reconsider and re-evaluate its use of Orientation Status to
22 automatically require patient cuffing whenever out-of-cell and
23 withhold mental health programming or treatment other than a
24 daily cell-front contact by a member of the interdisciplinary
25 improving its group programming." Defs. Objs. (ECF No. 4868) at
26 7. Defendants have not presented any evidence that calls into
27 question the Special Master's findings concerning the
28 inadequacies in individualized and group therapy at SVPP.
Defendants' objections are overruled.

1 treatment team." Report (ECF No. 4830) at 45. He also
2 recommends that SVPP "be directed to eliminate the use of Cuff
3 Status to require automatic cuffing of patients when out-of-cell,
4 overriding of patients' designations, and barring of patients'
5 access to out-of-cell individual and group treatment." Id.
6 Defendants contend the Special Master has failed to adequately
7 weigh the safety and security needs that undergird use of
8 Orientation Status. They characterize their objections to the
9 recommendation concerning Cuff Status as a motion to modify the
10 Special Master's findings concerning Cuff Status; however, they
11 specifically request that the recommendation be rejected. Defs.
12 Objs. (ECF No. 4868) at 9-10.

13 As reported by the Special Master, both Orientation Status
14 and Cuff Status are part of a "status and staging paradigm" used
15 at SVPP to set housing and programming for inmate-patients.
16 Report (ECF No. 4830) at 23. The Special Master reports that all
17 inmate-patients arriving at SVPP are placed on Orientation
18 Status, which means that they

19 are housed in a single cell for up to 14
20 days, have only personal hygiene items for
21 property, and must be cuffed at all times
22 they are outside of their cells (i.e. they
23 are effectively on Cuff Status) until they
24 are cleared by an ICC [Institution
25 Classification Committee] to program without
26 such restrictions. Patients on Orientation
27 Status are to be seen daily by an IDTT member
28 at the patient's cell front, but according to
the SVPP Program Manual, they do not have
additional programming.

Report (ECF No. 4830) at 23. After inmate-patients are released
from Orientation Status, they program through three Stages. See

1 id. Cuff Status is a "behavior-driven" return to the conditions
2 of Orientation Status. Report (ECF No. 4830) at 25. The SVPP
3 Program Manual requires that inmate-patients "'who engage in
4 aggressive/threatening behavior, assaultive behavior and indecent
5 exposure" be placed on Cuff Status. Id. (quoting SVPP Program
6 Manual, Section 6.12.) Cuff Status placement "overrides" the
7 Stage to which an inmate-patient has progressed and requires
8 handcuffs and escort by an MTA whenever an inmate it out of cell.
9 Id. The Special Master describes in detail the procedures for
10 Cuff Status, as well as the documentation required for that
11 status. Id.

12 Defendants contend that the Special Master has not
13 adequately considered the safety and security concerns in
14 recommending that the use of Orientation Status and Cuff Status
15 be reviewed and re-evaluated. This objection is without merit.
16 The Special Master recommends review and re-evaluation of the use
17 of Orientation Status and Cuff Status in light of the impact
18 placement in these statuses has on hospitalized inmate-patients'
19 access to necessary mental health care. See Report (ECF No.
20 4830) at 5.

21 Orientation Status and Cuff Status require the same
22 restricted housing conditions and extremely limited programming
23 for inmate-patients placed in either status. Orientation Status
24 delays the start of all but the most basic level of mental health
25 treatment for up to fourteen days for inmate-patients in need of
26 hospital care, many of whom have already waited more than thirty
27 days for necessary inpatient hospital care. Cuff Status
28 interrupts for behavioral reasons all but the most basic mental

1 health treatment. A recommendation to review and re-evaluate
2 these policies is not a recommendation for a particular outcome.
3 It is a recommendation, entirely appropriate on this record, that
4 defendants review these policies to assess whether the proper
5 balance between security considerations and necessary inpatient
6 mental health care has been achieved. After de novo review of
7 the record, and good cause appearing, this court will adopt in
8 full the Special Master's recommendation concerning review and
9 re-evaluation of the use of Orientation Status and Cuff Status.
10 In view of the fact that CDCR is the custodian of all members of
11 the plaintiff class and ultimately responsible for the delivery
12 of constitutionally adequate mental health care to them, and in
13 view of defendants' continuing objection concerning the role of
14 DSH in the remedial phase of this action, the order to review and
15 re-evaluate these policies will be directed to both the CDCR and
16 the DSH defendants. Given all the above, the review and re-
17 evaluation will take place under the supervision of the Special
18 Master and his experts.

19 Defendants seek modification of the Special Master's
20 findings concerning a lack of adequate documentation for eleven
21 inmates placed on cuff status because they contend "the Special
22 Master failed to give [SVPP] adequate credit for the
23 documentation that was present for these eleven inmates." Defs.
24 Objs. (ECF No. 4868) at 10. Defendants' evidentiary support for
25 this assertion is scant. See Decl. of Ahlin (ECF No. 4830-1) at
26 ¶ 31. Moreover, as with most of the other findings underlying
27 the Special Master's recommendations, defendants acknowledge the
28 need for improvement. See Defs. Objs. (ECF No. 4868) at 10.

1 The motion to modify the Special Master's findings concerning the
2 adequacy of documentation for inmate-patients on Cuff Status will
3 be denied.

4 The Special Master reports that

5 [m]ultiple patients were found to be on Cuff
6 Status without any documented rationale,
7 intervention and/or release criteria, leaving
8 patients with very limited mental health
9 programming for long periods of time.
10 Patients on Cuff Status for longer than ten
11 days were not referred to a psychologist
12 supervisor for the development of a behavior
13 plan, as required by SVPP policy.

14 Report (ECF No. 4830) at 5. As the Report makes clear, placement
15 on Cuff Status interrupts the provision of necessary mental
16 health care. As the Special Master finds,

17 [b]y placing a patient on Cuff Status without
18 documenting the reason for the placement, the
19 intervention planned, and the criteria for
20 release from Cuff Status, and by failing to
21 develop a required behavior plan, SVPP in
22 effect places the patient at risk of needless
23 deprivation of treatment and isolation in his
24 cell - the very antithesis of a therapeutic
25 environment for a seriously mentally ill
26 person. . . . The ability of a patient on
27 Cuff Status to access treatment is also
28 severely limited, despite the fact that he
was transferred to an inpatient program
*because he needs more treatment than he was
receiving at the sending institution.*

23 Id. at 30.

24 While the security considerations at issue cannot be
25 gainsaid, neither can the risk to members of the plaintiff class
26 from inappropriate placement and retention on Cuff Status be
27 underestimated. Defendants represent that they are correcting
28

1 the problems with documentation, have recently trained staff, and
2 have developed and implement a "cuff status monitoring tool."
3 Defs. Objs. (ECF No. 4868) at 10. Good cause appearing,
4 defendants will be directed to report to the court within fifteen
5 days whether there is any inmate-patient at SVPP on Cuff Status
6 without the required documentation. If there is any such inmate-
7 patient, defendants shall show cause in writing why this court
8 should not issue an injunction preventing defendants from placing
9 or maintaining any inmate-patient at SVPP on Cuff Status without
10 the required documentation.

11 3. Transfer Timelines

12 The Special Master recommends that SVPP "be directed to
13 begin tracking all patient bed assignments, and admit referred
14 and accepted patients as quickly as bed availability permits so
15 that beds are utilized to the fullest extent possible, and in no
16 event beyond 72 hours following bed assignment and 30 days from
17 the date of the referral." Report (ECF No. 4830) at 46.
18 Defendants contend this recommendation is based on an inaccurate
19 analysis of the wait list and an unreasonable interpretation of
20 Program Guide requirements for transfer to inpatient care.⁹

21 ⁹ Defendants also contend that "strict compliance with transfer
22 timelines is not the measure of whether SVPP is constitutionally
23 compliant; defendants argue that the key question is whether
24 transfer waiting periods expose inmates to significant risks of
25 harm" and "[t]he Special Master's report fails to describe a
26 single example in which an inmate-patient was exposed to an
27 excessive risk of harm because his admission to the SVPP was not
28 completed immediately." Defs. Objs. (ECF No. 4868) at 12. The
court reminds defendants, once again, that the Program Guides are
the remedial plan for this action and represent defendants'
determination of what is required to meet their constitutional
obligations to the plaintiff class. Moreover, the Special Master
reminds the court that the thirty-day timeframe in the Program

1 The Special Master's recommendation is based on findings
2 that (1) in a four month period between March 1, 2013 and June
3 30, 2013, twenty-seven percent of inmate-patients accepted for
4 treatment at SVPP were transferred after the end of the thirty
5 day period; (2) during that same four month period more than half
6 of the transfers completed within the thirty day period occurred
7 in the last five days of that period; and (3) SVPP does not track
8 bed assignments, which makes compliance with the seventy-two hour
9 timeframe for transport "difficult, if not impossible."

10 Defendants object to the percentages as reported by the
11 Special Master. In defendants' view, the thirty day period runs
12 from the time DSH decides to accept the inmate-patient, not from
13 the date the patient is referred by CDCR. Defendants base their
14 argument on language in the Program Guide that provides that some
15 inmate-patients may be placed on a waitlist after "acceptance."

16 The Program Guide is clear. All inmate-patients accepted
17 for treatment at SVPP, which is an intermediate care facility
18 (ICF), must be transferred within thirty days of referral.
19 Program Guide, 2009 Revision, at 12-1-16. Referral is defined as
20 "the date the completed referral packet is received by DMH by
21

22 Guide "was negotiated during a time when inpatient beds for CDCR
23 inmates were slowly becoming less scarce, and there was need for
24 a timeframe within which CDCR could conceivably comply under the
25 circumstances at that time." Report (ECF No. 4830) at 32. He
26 suggests, correctly, that in light of the dramatic increase in
27 availability of inpatient beds and known vacant hospital beds,
28 "[t]oday, transfers need not take anywhere close to 30 days to
complete, and in no instance should they take more than 30 days."
Id. Defendants are reminded that their constitutional obligation
is to provide "ready" access to adequate mental health care. See
Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982) *abrogated on*
other grounds by Sandin v. Conner, 515 U.S. 472 (1995).

1 facsimile or overnight mail." Referral must be completed within
2 five or ten working days from when an interdisciplinary treatment
3 team (IDTT) identifies an inmate-patient for referral to
4 inpatient care. Id. at 12-1-15, 12-1-16. Transfer is defined as
5 the date on which an inmate-patient "is placed into the LOC and
6 program to which s/he was referred." Id. at 12-1-15. The
7 Program Guide also requires that transport of inmate-patients to
8 the ICF "must be completed within 72 hours of bed assignment."
9 Id. at 12-1-16. Under the Program Guide, all inmate-patients
10 accepted by DSH for treatment at SVPP must arrive at SVPP within
11 thirty days of the date the referral packet arrives at DSH from
12 CDCR.¹⁰ Within that thirty day period all of the following must
13 occur: (1) the decision whether to accept an inmate-patient,
14 which be made within three working days of DSH receipt of the
15 referral, see id. at 12-6-10; (2) bed assignment for the
16 accepted inmate-patient; and (3) transport of the accepted
17 inmate-patient, which must occur within seventy-two hours of bed
18 assignment, see id. at 12-6-11. None of these operates to extend
19 the thirty day period, nor does the language cited by defendants
20 change the controlling timeframe. Defendants' objections are
21 overruled. The Special Master's recommendation will be adopted
22 in full.

23 4. Laundry

24 The Special Master's final recommendation is that SVPP
25 "resolve any and all remaining issues with, and obstacles to,
26 providing patients with the full complement of clean clothing,

27
28 ¹⁰ In fact, the Program Guide defines "'Referral' to DMH" as "the date the
completed referral packet is received by DMH by facsimile or overnight mail."

1 towels, and bed coverings, and make these provisions available to
2 patients on a timely basis according to established schedules.”
3 Report (ECF No. 4830) at 46. Defendants contend an order
4 concerning laundry is unnecessary because SVPP “has formed a
5 laundry committee that inventories laundry and is responsible for
6 resolving any laundry issues that arise.” Defs. Objs. at 13. It
7 is unclear when this committee was formed, but it may be that the
8 existence of the committee will operate to fulfill the Special
9 Master’s final recommendation without a further order by this
10 court.

11 C. Plaintiffs’ Motion

12 Plaintiffs seek a further report from the Special Master
13 within sixty days and a series of other specific orders. Two of
14 the matters for which plaintiffs seek remedial orders, use of
15 force and issuance of rules violation reports, are the subject of
16 ongoing proceedings before this court. The Special Master has
17 not included recommendations concerning these or the other two
18 issues highlighted by plaintiffs. The court finds that
19 resolution of plaintiffs’ pending motion concerning use of force
20 and disciplinary proceedings (ECF No. 4638), as well as further
21 monitoring by the Special Master, is necessary before the court
22 considers issuance of further specific orders in this area.
23 Plaintiffs’ motion will be denied without prejudice.

24 D. Standards for Injunctive Relief

25 The court does, by this order, direct specific action by
26 defendants. In this court’s view, the orders contained herein
27 are in aid of the remedy required by this court’s 1995 order. To
28 the extent that the requirements of 18 U.S.C. § 3626(a)(1) may

1 apply, this court finds that the orders contained herein are
2 narrowly drawn, extend no further than necessary to correct the
3 Eighth Amendment violation in the delivery of mental health care
4 to members of the plaintiff class, and are the least intrusive
5 means to that end. See 18 U.S.C. § 3626(a)(1)(A).

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

7 1. Defendants' October 14, 2013 motion to modify findings
8 in the September 24, 2013 Report of the Special Master on the
9 Salinas Valley Psychiatric Program (ECF No. 4868) is denied.

10 2. The findings in the September 24, 2013 Report of the
11 Special Master on the Salinas Valley Psychiatric Program (SVPP)
12 (ECF No. 4830) are adopted in full.

13 3. The recommendations of the Special Master in said Report
14 are adopted in part.

15 4. The CDCR and DHS defendants shall review and re-evaluate
16 the use of Orientation and Cuff Status at SVPP to determine
17 whether these policies as designed and implemented achieve the
18 proper balance between legitimate security needs and access to
19 necessary inpatient mental health care. This shall be carried
20 out under the guidance of the Special Master and his staff, with
21 participation and input from plaintiffs. The Special Master
22 shall report to the court on the results of this review and re-
23 evaluation in the report to be filed on March 31, 2014.

24 5. Within fifteen days from the date of this order
25 defendants shall inform the court in writing whether any there is
26 any inmate-patient at SVPP on Cuff Status without the
27 documentation required for such status, including reason for
28 placement, intervention planned, and criteria for release. If


1 there is any inmate-patient on Cuff Status without required
2 documentation, defendants shall show cause in writing why this
3 court should not issue an injunction preventing defendants from
4 placing or maintaining any inmate-patient at SVPP on Cuff Status
5 without the required documentation.

6 6. Defendants shall forthwith begin tracking all patient
7 bed assignments at SVPP, and admit referred and accepted patients
8 to SVPP as quickly as bed availability permits and in no event
9 beyond seventy-two hours following bed assignment and thirty days
10 from the date of the referral.

11 7. Plaintiffs' October 14, 2013 motion for additional
12 orders (ECF No. 4867) is denied without prejudice.

13 IT IS SO ORDERED.

14 DATED: November 12, 2013.

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17 
18 LAWRENCE K. KARLTON
19 SENIOR JUDGE
20 UNITED STATES DISTRICT COURT
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