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17
18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF CALIFORNIA
20

21 RALPH COLEMAN, et al.,
22 Plaintiffs,
23 v.
24 GAVIN NEWSOM, et al.,
25 Defendants.
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Case No. 2:90-CV-00520-KJM-DB

**STIPULATION AND PROPOSED
ORDER CONTINUING JUNE 30, 2020
DSH EVIDENTIARY HEARING AND
CLARIFYING DISCOVERY
OBLIGATIONS**

Judge: Hon. Kimberly J. Mueller
Date: June 30, 2020
Time: 10:00 a.m.

1 On April 10, 2020, after holding an ongoing series of status conferences addressing
2 the impact of the coronavirus pandemic on the *Coleman* class and Program Guide
3 compliance, this Court set an evidentiary hearing for April 21, 2020 to address the issue of
4 class member access to the Department of State Hospitals' (DSH) inpatient hospital care.
5 ECF No. 6600 at 4. On April 15, 2020, Defendants filed a motion for reconsideration or
6 clarification of the order setting the evidentiary hearing. *See* ECF No. 6612.

7 On April 17, 2020, the Court continued the evidentiary hearing to May 19, 2020, in
8 light of the parties' stipulation to continue the hearing subject to close monitoring in the
9 interim by the Special Master of all referrals, rejections and completed transfers to and
10 from the DSH inpatient programs. ECF No. 6622 at 3.

11 On April 24, 2020, the Court confirmed the May 19, 2020 evidentiary hearing.
12 ECF No. 6639 at 11. The Court "clarified that, with the exception of a temporary
13 modification to include COVID-19 screening, the *Coleman* Program Guide requirements
14 for transfer of class members to inpatient DSH hospital beds are in full force and effect
15 unless and until they are modified by order of this court." ECF No. 6639 at 6. The Court
16 ordered that:

17 1. Program Guide requirements for transfer of class members to
18 DSH inpatient hospital beds are temporarily modified to include COVID-19
19 screening in accordance with the protocols presented to this court and agreed
20 upon by the parties as cited above.

21 2. In all other respects, the Program Guide requirements for
22 transfer to DSH inpatient hospital beds remain in full force and effect unless
23 and until modified by order of this court.

24 3. Defendants shall cooperate fully in the Special Master's close
25 monitoring of transfers to DSH inpatient programs until May 19, 2020, so
26 that he is able to fully advise the court and the parties whether defendants are
27 in compliance with this order and applicable provisions of the Program
28 Guide.

1 ECF No. 6639 at 11.

2 On May 7, 2020, the Court granted in part and denied in part Defendants’ motion
3 for reconsideration or clarification. The Court clarified that the forthcoming evidentiary
4 hearing would address the following factual issues: “(1) as required by the April 24, 2020
5 order, have DSH and CDCR been complying with the Program Guide requirements, as
6 modified by the temporary addition of COVID-19 screening, for transfer class members to
7 inpatient hospital beds; (2) if they are not complying with those requirements, in what way
8 or ways are they deviating from those requirements; and (3) what is the rationale for any
9 deviation.” ECF No. 6660 at 2. The Court also stated it would entertain a stipulation of
10 the parties, approved by the Special Master, to continue the hearing for an additional
11 period not to exceed thirty days “[i]f the parties agree that defendants are following the
12 requirements of the court’s April 24, 2020 order.” *Id.* In the event of such an agreement,
13 the ensuing 30-day period would be utilized to permit the Special Master “to monitor
14 whether the necessary compliance has taken hold under the current circumstances.” *Id.*

15 On May 13, 2020, the parties filed a stipulation stating that “Defendants’ current
16 processes for transferring class members to DSH hospital beds are consistent with Program
17 Guide requirements, subject to temporary modifications to permit COVID-19 screening
18 consistent with this Court’s April 24, 2020 Order,” but needed to be memorialized in
19 written guidelines “to make clear that no additional clinical criteria will be imposed on top
20 of existing Program Guide requirements aside from COVID-19 screening and
21 consideration of individualized COVID-19 risk factors affecting potential patient transfers
22 to DSH.” ECF No. 6662 at 2. The parties therefore requested that the Court continue the
23 May 19, 2020 evidentiary hearing for 30 days, subject to close monitoring by the Special
24 Master of all referrals, rejections, and completed transfers to and from DSH inpatient
25 programs to ensure necessary compliance” in order to give the parties, with the assistance
26 of the Special Master, time to complete the updated written guidelines. *Id.* at 2-3.

27 The Court granted the parties’ May 13, 2020 stipulation on May 18, 2020, with the
28 understanding that Defendants were working with the Special Master to promptly update

1 their guidelines, and it continued the hearing to June 25, 2020 while directing the Special
2 Master to continue his ongoing “close monitoring.” ECF No. 6676 at 4-5. The Court also
3 stated it would entertain an additional stipulation by the parties to continue the hearing for
4 “an additional period not to exceed thirty days if the parties agree defendants are
5 continuing to following the requirements of the court’s April 24, 2020 order.” *Id.* at 5.

6 Defendants subsequently appealed the April 24 and May 7, 2020 orders on May 26,
7 2020, ECF No. 6684, which Defendants maintain divested this Court of jurisdiction to
8 proceed with the scheduled evidentiary hearing. On June 17, 2020, the Court held that the
9 April 24, 2020 order and the May 7, 2020 order are no more than “interim step[s] to
10 further proceedings,” namely, the evidentiary hearing currently set for June 25, 2020, and
11 rejected Defendants’ divestiture argument. ECF No. 6730 at 6. The Court then reset the
12 evidentiary hearing for June 30, 2020, continuing to July 1, 2020, as needed. *Id.* at 8. The
13 Court also ruled on the parties’ discovery dispute, directing Defendants to provide
14 supplemental discovery responses, namely, information current through May 31, 2020, by
15 June 22, 2020. *Id.*

16 In recent weeks, the parties have met and conferred multiple times under the
17 supervision of the Special Master and exchanged documents and information related to
18 DSH access in light of the coronavirus pandemic, including information from the Special
19 Master’s experts overseeing monitoring of the issues pursuant to the Court’s April 24,
20 2020 order. The information exchanged suggests that Defendants are following the
21 requirements of the Court’s April 24 order, and Defendants represent they are doing so.
22 Additionally, on June 12, 2020, Defendants provided Plaintiffs with an updated proposed
23 written protocol, which they revised and recirculated on June 19, 2020. Defendants
24 developed these protocols with the guidance of the Special Master’s experts and the parties
25 are discussing them in the ongoing task force meetings. Based on these positive
26 developments, the parties agree the June 30, 2020 evidentiary hearing should be further
27 continued.

28 Defendants separately submit that a further reason to continue the hearing is that

1 DSH Medical Director Dr. Katherine Warburton, a testifying witness identified by the
2 Court, and Deputy Attorney General Kyle Lewis, Defendants' lead counsel, are not
3 available for the evidentiary hearing on the rescheduled June 30, 2020 date. Dr.
4 Warburton will be traveling in a remote location during the hearing dates and will have
5 limited connectivity, and Mr. Lewis will be on military reserve duty from July 1-July 10,
6 2020.

7 The parties have further discussed issues concerning the timing and scope of
8 Defendants' ongoing supplementation of their responses to Plaintiffs' discovery requests
9 authorized by the Court's April 10 and June 17, 2020 orders, and have determined a
10 production schedule before the hearing.

11 The parties, therefore, agree as follows:

12 (1) Defendants agree to supplement their discovery responses by the 22nd of each
13 month, unless it falls on a holiday or weekend, in which case it will be produced on the
14 following regular court day, starting June 22, 2020 and lasting until the instant evidentiary
15 hearing is held or is taken off calendar;

16 a. The supplementation will include, inter alia, the following reports
17 including data that is current as of the last day of the prior month: Net Bed Capacity
18 Report, Pending Placement List, Discharge Data for all Legal Classifications;

19 b. The supplementation will also include, inter alia, any updated or
20 modified emergency plans, protocols, or program flex documents pertaining to any of the
21 five DSH hospitals;

22 c. The parties agree the statewide Census by Unit report and Census by
23 Unit report by legal class reports, while responsive, need not be supplemented at this time.

24 (2) DSH will also continue to produce reports responsive to Plaintiffs' discovery
25 that are part of its regular reporting obligations in their regular form and on their regular
26 cycle, including the Coleman Staffing and Coleman Inpatient Census and Waitlist Reports,
27 and need not separately produce those reports or the information in those reports as part of
28 its monthly supplemental discovery responses;

1 (3) DSH will also continue to produce draft interim reports responsive to Plaintiffs'
2 discovery that are part of their weekly regular reporting to the Special Master's COVID-19
3 Task Force as part of the Special Master's close monitoring, including the Coleman
4 Census and Waitlist, Coleman Census by Unit, Coleman Discharges, and OMD Discharges
5 Reports, and need not separately produce those reports or the information in those reports
6 as part of its monthly supplemental discovery responses; and

7 (2) The parties jointly request the Court continue the evidentiary hearing to July 30,
8 2020, and further request the Court continue all dates listed in its June 17, 2020 order
9 concerning Defendants' statement of issues briefing and the parties document exchange,
10 subject to resetting before the hearing, in order to permit the parties to continue discussing
11 transfer issues in the ongoing COVID-19 Task Force meetings and to give Plaintiffs
12 sufficient time to receive and review the aforementioned supplemental discovery responses
13 for the evidentiary hearing.

14
15 The Special Master has reviewed and approves this stipulation.

16 IT IS SO STIPULATED.

17
18 DATED: June 21, 2020

Respectfully submitted,

19 ROSEN BIEN GALVAN & GRUNFELD LLP

20 By: /s/ Lisa Ells

21 Lisa Ells

22 Attorneys for Plaintiffs
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DATED: June 21, 2020

XAVIER BECERRA
Attorney General of California

By: /s/ Kyle Lewis
Kyle Lewis
Deputy Attorney General

Attorneys for Defendants

[PROPOSED] ORDER

Pursuant to the foregoing stipulation of the parties, and good cause appearing, IT IS
SO ORDERED.

DATED: _____, 2020

Honorable Kimberly J. Mueller
United States District Judge