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14 UNITED STATES DISTRICT COURT  
15 EASTERN DISTRICT OF CALIFORNIA

17 RALPH COLEMAN, et al.,  
18 Plaintiffs,  
19 v.  
20 EDMUND G. BROWN, Jr., et al.,  
21 Defendants.

Case No. Civ S 90-0520 LKK-JFM

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' OBJECTIONS AND  
MOTION TO STRIKE PORTIONS OF  
SPECIAL MASTER'S REPORT ON  
SUICIDES OCCURRING IN  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION IN THE FIRST  
HALF OF 2012**

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**TABLE OF ABBREVIATIONS**

ASP or Avenal	Avenal State Prison
ASU	Administrative Segregation Unit
CCCMS	Correctional Clinical Case Manager System
CDCR	California Department of Corrections and Rehabilitation
CPR	Cardiopulmonary Resuscitation
EOP	Enhanced Outpatient Program
FOL or Folsom	Folsom State Prison
PLRA	Prison Litigation Reform Act
RJD or Donovan	Richard J. Donovan Correctional Facility

1 **INTRODUCTION**

2 On March 28, 2013, Defendants filed Objections and Motion to Strike Portions of  
3 Special Master’s Report on Suicides Occurring in California Department of Corrections  
4 and Rehabilitation (“CDCR”) in the First Half of 2012. Docket No. 4527 (hereinafter  
5 “Objections”). These Objections largely repeat complaints this Court has squarely rejected  
6 before, and the Court should do so again now. Tellingly, Defendants’ single new  
7 objection—that “Defendants have not ignored the Special Master’s recommendations”—  
8 misunderstands the basic nature of these recommendations. Defendants misread  
9 recommendations for “continuation of monitoring and assessment” (First Half 2012 Report  
10 at 8-10) as recommendations that the *Special Master* continue to monitor and assess, when  
11 the recommendations actually target *Defendants’* ongoing inadequacies in *their own*  
12 monitoring and assessment practices. This misunderstanding underscores Defendants’  
13 fundamental failure to take responsibility for implementing adequate and effective suicide  
14 prevention measures.

15 **FACTUAL AND PROCEDURAL BACKGROUND**

16 In response to this Court’s January 30, 2013 Order, the Special Master submitted a  
17 Report on Suicides Completed in the CDCR, January 1, 2012-June 30, 2012, filed  
18 March 13, 2013, Docket No. 4376 (hereinafter “First Half 2012 Report”). This Report  
19 focused on the fifteen suicides that occurred during the first six months of 2012, and  
20 contextualized these suicides in a broader analysis of the current and historic systemic  
21 deficiencies identified by the Special Master’s expert, Dr. Patterson. This is the fourteenth  
22 report on suicides by Dr. Patterson, who is a nationally recognized expert on suicide  
23 prevention in correctional settings. In the First Half 2012 Report, Dr. Patterson noted  
24 significant findings of grave concern, including the high rate of suicide within CDCR in  
25 the first half of 2012 (23.72 per 100,000), the high percentage of foreseeable and/or  
26 preventable suicides in the first half of 2012 (73%), and persistent failures of Defendants  
27 over the past fourteen years to provide critical, life-saving suicide prevention measures,  
28 such as suicide risk evaluations, 30-minute staggered welfare checks, and timely

1 emergency response. First Half 2012 Report at 2-4. Each of these measures has been the  
2 subject of prior recommendations by Dr. Patterson and orders by this Court. Dr. Patterson  
3 observed: “[Y]ear after year, CDCR fails to implement these recommendations. . . . No  
4 matter how many times these recommendations are reiterated, they continue to go  
5 unheeded, year after year, while the suicides among CDCR inmates continue unabated,  
6 and is worsening, as manifested by suicide rates that inch ever higher over the past several  
7 years.” *Id.* at 8 & 22.

8 Prior to submitting Objections to the First Half 2012 Report, Defendants had  
9 previously objected to and moved to strike portions of the Special Master’s Twenty-Fifth  
10 Round Monitoring Report and the Report on Suicides Completed in the CDCR in Calendar  
11 Year 2011. The Court found these objections to be without merit. *See* 2/28/13 Order,  
12 Docket No. 4361; 3/15/13 Order, Docket No. 4394. Despite the Court’s clear rulings on  
13 Defendants’ prior objections, Defendants now repeat many of these same objections here.

14 **ARGUMENT**

15 Defendants’ objections to the First Half 2012 Report provide additional support for  
16 Dr. Patterson’s conclusion that, in response to the Special Master’s recommendations (and,  
17 indeed, similar recommendations from CDCR’s suicide consultant, Mr. Hayes, and the  
18 endorsement of the Special Master’s recommendations by Defendant’s own termination  
19 expert, Dr. Dvoskin), CDCR, year after year, sticks its head in the sand, and denies any  
20 wrongdoing or responsibility. Of the six objections Defendants articulate in their  
21 Objections, two essentially re-allege the premise of Defendants’ Termination Motion;  
22 three repeat prior objections that the Court has already rejected to terminology and  
23 methodology used by Dr. Patterson; and one fundamentally misunderstands the Special  
24 Master’s recommendations.<sup>1</sup>

25 \_\_\_\_\_  
26 <sup>1</sup> Defendants also complain about the “compressed time frame” the Court granted for the  
27 filing of their objections, stating that this Court has “eliminated the opportunity for the  
28 special master to consider the parties’ comments and objections before this report was  
(footnote continued)

1 **I. DEFENDANTS' FIRST AND LAST OBJECTIONS ESSENTIALLY RE-**  
2 **ARGUE THEIR TERMINATION MOTION AND SHOULD BE**  
3 **OVERRULED**

4 Defendants' first objection ("California's Suicide-Prevention Program Complies  
5 with the Constitution") and last objection ("Objection to Any Recommendation That the  
6 Court Order Further Costly and Intrusive Oversight of the Prison Mental Health Care  
7 Delivery System"), essentially reference and repeat the premise of Defendants'  
8 Termination Motion, alleging that Defendants' system is constitutional and monitoring  
9 should end. Objections at 3 & 7. This Court previously overruled Defendants' attempts to  
10 incorporate the arguments of their Termination Motion into their objections to Special  
11 Master reports, and should do so again now. *See* 2/28/13 Order at 10:10-13 & 10:23-11:2;  
12 3/15/13 Order at 2:8-13.

13 Further, to the extent Defendants' first objection alleges that the First Half 2012  
14 Report "fails to assess whether the State's prison mental health care system satisfies  
15 constitutional standards," (Objections at 3:9-10), the Court already extensively addressed  
16 and rejected this argument in its February 28, 2013 Order: "As will appear, *infra*, this  
17 objection betrays a fundamental misunderstanding of the history of this action and its  
18 remedial process. In fact, the Special Master is not tasked with assessing whether the  
19 State's prison mental health care system satisfies constitutional standards. That assessment  
20 is for this court." 2/28/13 Order at 2:5-9 (internal quotations omitted).

21 \_\_\_\_\_  
22 filed" and that their time to file these objections was unfairly shortened. Objections at  
23 2:20-25. Defendants fail to acknowledge that this Court's Order governing the filing of  
24 the Special Master's recent reports, and the parties comments thereupon, was mandated by  
25 Defendants' decision to file, without warning or notification to the Court or Plaintiffs, a  
26 motion to terminate this litigation entirely. Because Defendants chose a litigation tactic  
27 that, in turn, set into motion the dictates of the PLRA, under which this Court must make  
28 findings regarding the termination request within ninety days, the Court issued necessary  
and proper orders to ensure that it has before it all the evidence required to assess current  
conditions in the system.

1 **II. THE COURT SHOULD REJECT DEFENDANTS' ATTEMPTS TO RE-**  
2 **LITIGATE OBJECTIONS ON WHICH THIS COURT HAS ALREADY**  
3 **RULED MULTIPLE TIMES**

3 Three of Defendants' objections mirror those made to either the 2011 Suicide  
4 Report or the Twenty-Fifth Monitoring Report, which this Court addressed at length in  
5 prior orders. *See* 3/15/13 Order at 4:10-20 (affirming use of CDCR suicide rate and  
6 comparison to other suicide rates); 5:19-8:11 (denying motion to strike use of terms  
7 "foreseeable and/or preventable"); 11:21-22 (affirming qualifications of Dr. Patterson to  
8 opine about whether a suicide was foreseeable or preventable); 2/28/13 Order at 10:8-9  
9 (affirming qualifications of Special Master and his experts to draw conclusions).

10 Defendants' attempt to re-litigate these resolved issues is unwarranted and should be  
11 denied.

12 **A. The Court Should Reject Defendants' Objection to Language**  
13 **Concerning the Suicide Rate in CDCR Prisons and Comparing it to**  
14 **Other Systems**

14 The Court has twice considered and overruled Defendants' objections to language  
15 in Special Master's reports concerning the suicide rate in CDCR prisons and comparing it  
16 to other systems' suicide rates in the past few months. 3/15/13 Order at 4:12-20; 2/28/13  
17 Order at 7-8. In its February 28, 2013 Order, the Court cited *Brown v. Plata*, 131 S. Ct.  
18 1910, 1924-25 & n.2 (2011), in which the Supreme Court found the comparison between  
19 CDCR's suicide rate and the national average for prison systems to be probative evidence  
20 that California prisoners with serious mental illness "do not receive minimal, adequate  
21 care." 2/28/13 Order at 7:10-14.

22 Defendants cite to the non-controlling, pre-*Brown v. Plata* Seventh Circuit decision,  
23 *Boncher v. Brown County*, 272 F.3d 484, 486 (2001) (Posner, J.), in purported support of  
24 their remarkable assertion that the Special Master should not compare CDCR's suicide rate  
25 to the suicide rate of federal and other state prison systems. *Boncher*, however, held to the  
26 contrary: the Seventh Circuit found that comparisons of the suicide rate of one institution  
27 or system to the rates in comparable institutions or systems *is* relevant information for  
28 determining whether a system is meeting constitutional standards. *Id.* at 486-87.



1 Moreover, *Jutzi-Johnson v. U.S.*, 263 F.3d 753, 757 (7th Cir. 2001), another decision  
2 written by Judge Posner earlier in 2001, and referenced for this point in *Boncher*, further  
3 explains why it makes sense to compare suicide rates between custodial institutions: “The  
4 population of prisons and jails is not a random sample of American citizens. . . . [T]he  
5 conditions of incarceration place the prisoners under considerable psychological strain.”

6 Defendants’ attempt to remove this kind of standard scientifically-accepted analysis  
7 from the First Half 2012 Report is consistent with Defendants’ other recent attempts to  
8 remove unflattering language from Special Master reports. *See, e.g.*, First Half 2012  
9 Report at 21 (Defendants moved to “strike the language in the 2011 Suicide Report that in  
10 25 or 75.3 percent of suicides there was ‘at least some degree of inadequacy in assessment,  
11 treatment, or intervention’ on the ground that this classification creates an ‘unfairly  
12 negative impression of the State’s mental health and suicide prevention system. It creates  
13 a negative impression because it should...”) (quoting 2011 Suicide Report Objections at  
14 10). As Dr. Patterson pointed out, if there is anything that actually makes California’s  
15 prison population demographically unique, then Defendants have been on notice that  
16 suicide attempts are likely to be higher, and should have put in place *more* suicide  
17 precautions, rather than fewer. *See* First Half 2012 Report at 20-21.

18 **B. Defendants’ Unfounded Objection to the Use of Terms Foreseeable and**  
19 **Preventable**

20 Despite this Court’s March 15, 2013 Order, which reaffirmed a ruling ten years  
21 prior on the validity of using the terms “foreseeable” and “preventable” in the Special  
22 Master’s suicide reports (3/15/13 Order at 6-10), Defendants again object to the use of  
23 these terms. Objections at 5:2-10. Defendants’ cursory repetition of this objection is  
24 internally contradictory, both relying on Dr. Patterson’s findings as to whether suicides  
25 were foreseeable or preventable to somehow claim that Defendants were not responsible  
26 for “preventable” suicides, and objecting to the use of these terms. However, in the cases  
27 reviewed and found preventable by the Special Master’s expert, the suicides were found  
28 preventable due to Defendants’ documented failure to comply with the court-ordered

1 mandates to provide 30-minute staggered welfare checks and emergency response by first-  
 2 responder correctional officers. *See, e.g.*, Inmate O (EOP prisoner who committed suicide  
 3 in an ASU overflow cell at RJD on June 29, 2012; institution’s own review identified  
 4 numerous problems with the provision of 30-minute welfare checks, including: incorrect  
 5 tracking of the dates; forms not filled out by the person conducting the actual rounds; and  
 6 lack of credibility of checks due to the short period of time allocated to complete the  
 7 welfare checks, First Half 2012 Report at 153, 157-158); Inmate N (CCCMS prisoner who  
 8 committed suicide in an ASU cell at ASP on June 28, 2012. CPR delayed five minutes  
 9 after delayed discovery of the noose; found in state of rigor mortis was strong indication  
 10 that 30-minute welfare checks were either not performed or performed improperly, *id.* at  
 11 147, 151); and Inmate K (a CCCMS prisoner who committed suicide in ASU at Folsom on  
 12 May 30, 2012, where failure to provide 30-minute staggered welfare checks, along with  
 13 fact that the tier officers signed for all completed welfare checks, although they did not  
 14 perform them were identified problems, *id.* at 122, 131-132). The preventable nature of  
 15 these suicides falls squarely within the responsibility of Defendants, who have failed to  
 16 implement these most basic of suicide prevention measures.

17 This Court should again overrule Defendants’ objection to these terms, which “are  
 18 used by experts in the field of correctional health care, including defendants’ expert,” and  
 19 “are well-defined in this action.” 3/15/13 Order at 7 n.8 & 6:15.

20 **C. The Special Master’s Report on Individual Cases Are Well-Founded**  
 21 **and Supported by Defendants’ Termination Expert, Dr. Dvoskin**

22 Defendants also object to the “Special Master’s Report on Individual Cases,” which  
 23 largely seems to be an objection to the fact that Dr. Patterson drew conclusions about  
 24 suicide events that happened in the past, because conclusions about the past are, according  
 25 to Defendants, “20-20 hindsight” and “hindsight second-guessing and speculation.”  
 26 Objections at 5:12-25. As the Court has previously observed regarding similar objections,  
 27 “[t]he Special Master and his experts are well-qualified to draw conclusions from findings  
 28 on matters within the scope of their duties and there is no basis for striking such

1 conclusions,” (2/28/13 Order at 10:8-9), and “Dr. Patterson is well-qualified to opine  
2 about whether a suicide was foreseeable or preventable.” 3/15/13 Order at 11:21-22.

3 Moreover, the expertise of Dr. Patterson in reviewing individual cases of suicides is  
4 well-established, as noted by Defendants’ termination expert, Dr. Dvoskin in his prior  
5 review of Dr. Patterson’s review of the 2011 suicides: “[I]n reviewing the individual  
6 cases, I agree with many of Dr. Patterson’s findings ... [and] [e]ven where we disagreed,  
7 in most cases there were simply two alternative and equally reasonable ways to look at the  
8 case.” Dvoskin Response to 2011 Suicide Report, Exhibit 1 to Declaration of Debbie  
9 Vorous, filed 2/11/13, Docket No. 4326-6, at 2. In his review of the First Half 2012  
10 Report, Dr. Dvoskin notes that, “[a]s was the case in my last response to Dr. Patterson’s  
11 report, I found much with which to agree in this latest report.” Response to Dr. Raymond  
12 F. Patterson’s Report on Suicides Completed in the CDCR in January 1, 2012 – June 30,  
13 2012, Exhibit 12, to Declaration of Patrick R. McKinney, filed 3/22/13, Docket No. 4491-  
14 17 (hereinafter, “Dvoskin 2012” ) at p. 1. In fact, Dr. Dvoskin goes even further and  
15 endorses the Special Master’s recommendation to reduce or remove any punitive aspects  
16 of suicide watch and to ensure that welfare checks include “some observation that the  
17 inmate is alive.” *Id.* Defendants cherry-pick comments from Dr. Dvoskin’s review of  
18 three suicides, Inmate F, J and K, to argue that the First Half 2012 Report’s “criticisms are  
19 unfounded, and should be struck because they disregard the causation requirement, and  
20 because they engage in hindsight second-guessing and speculation.” Objections at 5:24-  
21 25. Yet, Dr. Dvoskin never directly disagrees with Dr. Patterson’s conclusion that the  
22 suicides were foreseeable and/or preventable, when discussing these three suicides.  
23 Dvoskin 2012 at 10, 14, 15 (Inmate F, “It appears that the mental health staff took the  
24 inmate’s risk seriously ... on the other hand, one might question the decision to release  
25 him back to CCCMS status ... in light of his moderate suicide risk;” Inmate J: Discussing  
26 Dr. Patterson’s concern that a cell search might have revealed through examination of  
27 prisoner’s letters that he had given up, noting however, that it is “not my understanding  
28 that staff in any correctional institution routinely read through inmate’s private and

1 personal correspondence, absent some legitimate reason to do so;” and Inmate K: “I do  
2 agree with the observation that improved communication between medical and mental  
3 health might have been beneficial in this case ... however, this is much more clear in  
4 retrospect.”) Defendants’ general assertion that the Special Master’s conclusions about  
5 specific individual cases are erroneous is thus “belied by defendants’ own evidence and is  
6 frivolous,” and should be overruled by this Court. *See* 3/15/13 Order at 12:4-7.

7 Defendants also cite to their Termination Reply Declarations as evidence that  
8 Defendants have remedied any constitutional or institutional problems identified through  
9 the suicide review process, suggesting that the “State’s purported responsibility for them  
10 significantly decreases.” Objections at 6:7; 6:10-12. Plaintiffs have submitted Evidentiary  
11 Objections to these cited declarations. *See* Plaintiffs’ Evidentiary Objections to  
12 Defendants’ Reply Declarations and Motion to Strike, Docket No. 4513, filed 3/26/13 at  
13 10, 63, 94, 101, 108, and 110. Any evidence of future actions by Defendants to address  
14 these serious suicide prevention deficiencies is irrelevant to the First Half 2012 Report’s  
15 findings.

16 **III. DEFENDANTS’ ARGUMENT THAT THEY HAVE FOLLOWED THE**  
17 **SPECIAL MASTER’S SUICIDE PREVENTION RECOMMENDATIONS**  
18 **MISUNDERSTANDS THE RECOMMENDATIONS AND IS FURTHER**  
19 **EVIDENCE OF DEFENDANTS’ FAILURE TO TAKE APPROPRIATE**  
20 **ACTION TO PREVENT SUICIDES**

21 Defendants perfunctorily claim that CDCR has “already implemented” all of the  
22 Special Master’s recommendations regarding suicide prevention. Objections at 6:14-7:12.  
23 Not only is this glaringly untrue, but Defendants’ reading of the recommendations is  
24 fundamentally flawed and highlights Defendants’ failure to appreciate the nature of the  
25 Special Master’s concerns. For example, the first recommendation in the First Half 2012  
26 Report recommends “that CDCR comply with various specified existing Program Guide  
27 and court-ordered requirements and standards” through “[c]ontinuation of monitoring and  
28 assessment of conduct of five-day clinical follow-up, custody staff adherence to policies  
and procedures regarding conduct of custody welfare checks and others, and supervision of  
inmates...” (First Half 2012 Report at 8.) Defendants contend that “there is nothing in the

1 recommendation for CDCR to implement” because the Defendants misinterpret the  
2 recommendation to mean “simply that [the special master] be allowed to continue  
3 monitoring. So there is nothing in the recommendation for CDCR to implement.”  
4 Objections at 6:21-22. This recommendation, like the others included in the First Half  
5 2012 Report, is actually a recommendation targeted at *Defendants’* monitoring of their  
6 own staff, presumably with the aspiration that if Defendants actually fully implemented  
7 such measures, they might be able to successfully run their own mental health delivery  
8 system at some point in the future.

9 Defendants’ evident confusion with respect to the Special Master’s  
10 recommendations, which, as Dr. Patterson points out, have been repeated in various forms  
11 for the past fourteen years, underscores Defendants’ fundamental failure to take  
12 responsibility for implementing adequate and effective suicide prevention measures. In  
13 light of Defendants’ basic misunderstanding of the recommendations, their objection to  
14 Dr. Patterson’s conclusion that “*year after year, CDCR fails to implement these*  
15 *recommendations,*” “would border on the absurd,” “[i]f the matters weren’t so serious.”  
16 *See 2/28/13 Order at 8 n.9.*

17 **CONCLUSION**

18 Defendants’ objections to the First Half 2012 Report are spurious attacks on the  
19 Special Master and the Special Master’s expert, and should be overruled, again, by this  
20 Court.

21 DATED: April 2, 2013

Respectfully submitted,

22 ROSEN BIEN GALVAN & GRUNFELD LLP  
23

24 By: /s/ Jane E. Kahn  
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26 Attorneys for Plaintiffs  
27  
28