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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA
 12 SACRAMENTO DIVISION

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

Case No. 2:90-cv-00520 KJM-DB (PC)
**STIPULATION AND ORDER TO
 EXTEND THE APRIL 14, 2017 ORDER
 WAIVING STATE LAW REGARDING
 L-WING AT CALIFORNIA MEDICAL
 FACILITY**
 Judge: The Hon. Kimberly J. Mueller

21 On April 14, 2017, the Court approved and ordered the parties’ stipulation to waive state
 22 licensing requirements so that CDCR could convert 37 cells on the first floor of the L-Wing at the
 23 California Medical Facility (L-1) into 70 temporary unlicensed Intermediate Care Facility (ICF)
 24 level-of-care beds and two observation and restraint rooms for high-custody inmate-patients
 25 referred for ICF care. (ECF No. 5605.) The Court approved the parties’ stipulation on two
 26 conditions: (1) “Defendants shall report to the Special Master monthly as to whether there are
 27 any inmate-patients in L-1 wing who have been custodially approved by CDCR and clinically
 28 cleared by the Department of State Hospitals (DSH) for placement in one of the DSH facilities

[3419376.1]

1 and, if so, why any such inmate-patient is in the L-1 Wing rather than in a DSH facility consistent
2 with the patient’s Least Restrictive Housing designation or other appropriate DSH facility;” and
3 (2) “the parties are directed to work with the Special Master to bring the plans for the L-1 Wing
4 unit into compliance, as necessary and as expeditiously as possible, with the requirements of the
5 October 18, 2007 order [ECF No. 2461].” (*Id.* at 5.)

6 Under the April 14, 2017 order, the waiver of state law lasted for eighteen months from the
7 date of the order. (ECF No. 5605.) The parties revisited the need for the waiver and determined
8 that extending it for an additional eighteen-month period would provide additional intermediate
9 care beds to meet the population’s needs. (ECF No. 5950.) On August 22, 2018, the parties
10 stipulated to continue the April 14, 2017 waiver for another eighteen months. (*Id.*) The current
11 waiver of state law regarding L-1 at the California Medical Facility (CMF) expires on April 15,
12 2020. (*Id.*)

13 As a condition of the waiver, CDCR provides monthly reports to the Special Master and
14 Plaintiffs patient level data showing offered out-of-cell time, offered structured hours, and
15 program cancellations. (ECF No. 5950.)

16 CDCR continues to need the beds in L-1 to provide additional inpatient beds pending
17 planned construction and activation of new flexible beds. The parties have reviewed issues
18 concerning L-1 and Plaintiffs seek additional assurances that Defendants will be able to comply
19 with the terms of the order waiving state law requirements. However, as a result of the need to
20 focus on issues related to the response to the COVID-19 pandemic, CDCR needs additional time
21 to resolve issues concerning the treatment provided in L-1, particularly a plan to ensure each
22 patient is offered 12 hours of out-of-cell time daily.

23 Accordingly, to provide CDCR additional time to resolve the outstanding issues concerning
24 L-1, the parties jointly request the Court extend the April 14, 2017 order waiving state law for an
25 additional six months. Defendants agree, as a condition for the extension of the waiver, to
26 develop and submit to the Special Master and Plaintiffs a plan to provide the additional
27 assurances Plaintiffs seek that Defendants will be able to comply with the terms of the order
28 waiving state law requirements. Because CDCR is unable to forecast how long patient

1 movement will be impacted by the COVID-19 pandemic, and cannot determine whether any
2 proposed plan will provide a workable solution to ensuring CDCR consistently offers patients in
3 L-1 twelve hours of daily out-of-cell time, at the end of five months, the parties agree to revisit
4 the need for a further extension of the waiver.

5 Good cause presented to the Court and appearing, the parties stipulate that the Court should
6 extend the waivers of the licensing requirements described below for an additional six months
7 from the date of the Court's order.

8 **IT IS STIPULATED AND ORDERED AS FOLLOWS:**

9 1. The following state licensing requirements shall be waived with respect to the 70
10 temporary Intermediate Care Facility beds and two observation and restraint rooms in the
11 L-Wing, L-1, at California Medical Facility:

12 A. California Health and Safety Code section 1250(j); and

13 B. California Code of Regulations, Title 22, sections 79501–79861.

14 2. The waiver is extended six months to October 15, 2020;

15 3. Defendants shall provide the Special Master and Plaintiffs a proposed plan to address
16 the issues that interfere with CDCR's ability to consistently provide all patients in L-1 twelve
17 hours of out of cell time each day; and

18 4. Within five months from the date of this order, the parties agree to revisit the need for
19 a further extension of the waiver.

20 The Special Master has reviewed and approves this stipulation.

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Dated: April 14, 2020

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/s/ ELISE OWENS THORN
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Deputy Attorney General
Attorneys for Defendants


Dated: April 14, 2020

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/s/ Cara Trapani
Cara Trapani
Attorneys for Plaintiffs

IT IS SO ORDERED.

DATED: April 14, 2020.



CHIEF UNITED STATES DISTRICT JUDGE