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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,  
Plaintiffs,  
v.  
GAVIN NEWSOM, et al.,  
Defendants.

No. 2:90-cv-0520 KJM DB P

ORDER

On January 28, 2021, the Special Master filed his second Monitoring Report on the Mental Health Inpatient Care Programs for Inmates in the California Department of Corrections and Rehabilitation (“Report”). ECF No. 7039. The Report is the second since the July 1, 2017 transfer of administrative responsibility and control of six inpatient programs from the California Department of State Hospitals (DSH) to the California Department of Corrections and Rehabilitation (CDCR).<sup>1</sup> The Report covers the following: monitoring visits to all nine inpatient mental health programs, three operated by DSH, and six psychiatric inpatient programs (PIPs) operated by CDCR during the period from September 17, 2019 to March 12, 2020, *id.* at 9<sup>2</sup>; paper

<sup>1</sup> The first such Report was filed August 30, 2018. ECF No. 5894.

<sup>2</sup> In this order, citations to page numbers in documents filed in the Court’s Electronic Case Filing (ECF) System are to the page number assigned by the ECF System and located in the upper right hand corner of the page.

1 monitoring conducted by the Special Master during his Twenty-Eighth Monitoring Round  
2 following the onset of the COVID-19 pandemic in March 2020, reflected in this report through  
3 October 2020, *id.* at, *e.g.*, 20; and the work by workgroups led by the Special Master during the  
4 same period, *id.* at, *e.g.*, 30.

5 On February 8, 2021, defendants filed a response and objections to the Report,  
6 ECF No. 7051, and on February 22, 2021, plaintiffs filed a reply to defendants' response and  
7 objections, ECF No. 7067. On May 26, 2021, in connection with its review of the 2021 Report,  
8 the court directed defendants to file the most recent Mental Health Bed Need Study and, going  
9 forward, to file each Mental Health Bed Need Study within five days of its publication. ECF No.  
10 7185. On May 27, 2021, defendants filed the Spring 2021 Mental Health Bed Need Study. ECF  
11 No. 7186. On January 18, 2022, defendants filed the Fall 2021 Mental Health Bed Need Study,  
12 ECF No. 7421, and on May 16, 2022, defendants filed the May 2022 Mental Health Bed Need  
13 Study, based on Spring 2022 population projections, ECF No. 7553.

14 Both the COVID-19 pandemic and events in this litigation have mooted or  
15 otherwise affected some of defendants' objections to the Special Master's findings and  
16 recommendations as well as some of the recommendations themselves. As explained below,  
17 while the court adopts the Special Master's factual findings it declines to make any further  
18 specific orders at this time.

19 I. Standard of Review

20 Paragraph C of the Order of Reference provides in relevant part:

21 [A]ny compliance report of the special master filed in accordance  
22 with paragraph A(5) above shall be adopted as the findings of fact  
23 and conclusions of law of the court unless, within ten days after being  
24 served with the filing of the report, either side moves to object or  
25 modify the report. . . . The objecting party shall note each particular  
26 finding or recommendation to which objection is made, shall provide  
proposed alternative findings or recommendations, and may request  
a hearing before the court. Pursuant to Fed. R. Civ. P. 53(e) (2), the  
court shall accept the special master's findings of fact unless they are  
clearly erroneous.

27 ECF No. 640 at 8. "A finding is 'clearly erroneous' when although there is evidence to support it,  
28 the reviewing court on the entire evidence is left with the definite and firm conviction that a

1 mistake has been committed.” *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)  
2 (quoted in *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985)).

3 II. Defendants’ First Objection

4 Defendants first object that the Report fails to distinguish systemic issues in access  
5 to inpatient care from access issues attributable to the COVID-19 pandemic, and improperly  
6 conflates “long-standing problems with issues that were compliant before the pandemic.” ECF  
7 No. 7051 at 2-5. Plaintiffs disagree. ECF No. 7067 at 2-6. Defendants point to several findings  
8 in the report in support of this general objection.

9 A. Waitlist

10 Defendants take issue with the following statements in the Report:

11 Combined with the uneven care being provided in the PIPs, the  
12 shortage of inpatient beds exacerbates an issue defendants have  
13 been grappling with for years. At the time of this writing, the list of  
14 *Coleman* class members waiting for inpatient care beds remains  
high, at approximately 300 or more.

15 ECF No. 7051 at 3 (quoting ECF No. 7039 at 21). Defendants contend the current waitlist for  
16 inpatient care should be attributed to public health measures implemented to protect patients and  
17 staff from the COVID-19 pandemic and that the Special Master’s failure to make this attribution  
18 gives “the false impression of backsliding on [d]efendants’ successful compliance with inpatient  
19 transfer requirements over the past several years.” *Id.* Plaintiffs point to a report filed by the  
20 Special Master in early 2020, and defendants’ own reporting, which they argue suggests even  
21 before the onset of the COVID-19 pandemic defendants were again facing a significant shortage  
22 of inpatient beds. ECF No. 7067 at 3 (citing ECF No. 6579 at 12-14; ECF No. 6856 ¶ 72 &  
23 Ex. H at 185). Plaintiffs also argue that defendants’ achievement of compliance with transfer  
24 requirements has been accomplished with continued reliance on unlicensed hospital beds with no  
25 plan to replace them with licensed beds. *Id.* at 3-4.

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1 The entire finding of the Special Master is as follows:

2 One serious issue remains the lack of a sufficient number of inpatient  
3 beds. To illustrate, at SVSP-PIP, housing units C5 and C6—which,  
4 in 2011, were established for temporary use as intermediate care  
5 units due to severe shortages of inpatient beds—remain in use to this  
6 day. During the time the conversion of C5 and C6 was in progress,  
7 the number of seriously mentally ill inmates waiting for inpatient  
8 care beds exceeded 400. ECF No. 3929 at 1. Combined with the  
9 uneven care being provided in the PIPs, the shortage of inpatient beds  
10 exacerbates an issue defendants have been grappling with for years.  
11 At the time of this writing, the list of *Coleman* class members waiting  
12 for inpatient care beds remains high, at approximately 300 or more.

13 ECF No. 7039 at 21. Defendants do not challenge the factual finding that they have an ongoing  
14 shortage of inpatient beds.<sup>4</sup> Nor do defendants challenge the size of the waitlist for inpatient care  
15 reported by the Special Master; in fact, the nature of their objection acknowledges the finding is  
16 correct. *See* ECF No. 7051 at 3.

17 The Special Master’s finding in the Report is consistent with past findings. In  
18 March 2017, the court found that waitlists for inpatient care have historically arisen due in large  
19 part to a combination of an insufficient number of inpatient beds to meet projected need and less  
20 than full utilization of dedicated inpatient beds, particularly those at DSH-Atascadero and DSH-  
21 Coalinga. *See* ECF No. 5583, *passim*; *see also* Section IV, *infra*. For more than a year, as a  
22 result of the public health emergency presented by COVID-19, defendants restricted inmate  
23 movement, including transfers to inpatient care. In addition, for more than a year, the public  
24 health emergency has required additional physical space in which to provide mental health care,  
25 both to guarantee adequate quarantine and isolation space as well as to ensure adequate distance  
26 between inmate/patients and care providers. These restrictions on access to inpatient beds mirror  
27 past shortfalls and have resulted in the same consequence for class members: a sizeable waitlist  
28 for access to necessary inpatient care. It is entirely likely, as defendants contend, that steps to  
comply with public health requirements during the initial stages of the COVID-19 pandemic  
contributed to delays in access to inpatient care and the growth of the waitlist for inpatient care.  
That does not, however, make the Special Master’s finding erroneous, that the COVID-19

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<sup>4</sup> Indeed, defendants recently acknowledged their ongoing reliance on unlicensed units to provide inpatient mental health care and their commitment to planning for deactivation of those beds. *See* ECF No. 7133 at 3. The court takes judicial notice<sup>4</sup> of this filing.

1 pandemic was an exacerbation of, rather than a cause of, problems with access to inpatient care  
2 reported during this monitoring period. Regardless of whether, or to what extent, emergency  
3 management of the COVID-19 pandemic required at least short-term imposition of the  
4 restrictions chosen by defendants, the attendant consequence of a re-emergent waitlist must be  
5 remedied and the Special Master's observations are integral to that remediation.

6 B. Access to DSH Inpatient Programs

7 Defendants also object to the Special Master's inclusion of post-November 2019  
8 data concerning admissions to DSH and to comparison of DSH admission of *Coleman* class  
9 members with DSH admission of Offenders with Mental Disorders (OMHDs) during  
10 management of the pandemic. While defendants take issue with some aspects of the Special  
11 Master's analysis, they have not identified with any specificity findings that are clearly erroneous.  
12 This objection is overruled.

13 C. Discussion of Impacts of COVID-19

14 Defendants also object to the Special Master's failure to "explain the impacts of  
15 COVID-19" on the provision of inpatient mental health care "during the monitoring round and  
16 the reporting period," contending such an explanation would "better inform and guide further  
17 action." ECF No. 7051 at 5. To the extent this is an objection to the Special Master's general  
18 finding that COVID-19 "primarily highlighted" existing issues but did not create them,  
19 defendants have presented no evidence that this finding is clearly erroneous.

20 D. Conclusion

21 For all of the foregoing reasons, defendants' first objection is overruled.

22 III. Defendants' Second Objection

23 Second, defendants object to the Special Master's finding that the CDCR and DSH  
24 defendants are failing to maintain a ten percent vacancy rate among psychiatrists, psychologists  
25 and clinical social workers. ECF No. 7051 at 5 (citing Inpatient Program Report at 15, 16, and  
26 40). Defendants contend the Special Master "wrongly assumes" that the 10 percent maximum  
27 staffing vacancy rate required by the court's June 13, 2002 order, ECF No. 1383, applies to the  
28 CDCR PIPs; defendants argue it does not. ECF No. 7051 at 5. Plaintiffs contend defendants

1 have waived this argument by failing to raise it in objections to the Special Master’s 2018  
2 monitoring report on inpatient care, ECF No. 5894. ECF No. 7067 at 6-7. Plaintiffs also observe  
3 that defendants have provided no reason why a ten percent vacancy rate cap should not apply to  
4 the inpatient programs. *Id.* at 7-8.

5 In the Report, the Special Master explains he has used the 10 percent vacancy cap  
6 established in the June 13, 2002 order as a reporting standard in monitoring the CDCR PIPs since  
7 CDCR assumed responsibility for those inpatient programs and that defendants have not until  
8 now objected to that approach. ECF No. 7039 at 15. The Special Master also states his view that  
9 the question of whether the vacancy rate the court established in its June 13, 2002 order applies to  
10 DSH “is a legal issue outside of the Special Master’s authority to determine.” *Id.* at 16.

11 Defendants’ objection is misplaced; it also fails to show that the challenged  
12 findings are clearly erroneous. As the court has explained in another context, “the degree to  
13 which defendants have implemented” the remedial requirements in this action “is extremely  
14 relevant and useful to assessment of whether they are meeting their constitutional obligations.”  
15 February 28, 2013 Order, ECF No. 4361, at 9. Moreover, as this court suggested during the  
16 May 14, 2021 hearing on plaintiffs’ motion to clarify aspects of the application of the June 13,  
17 2002 order, any determination that particular clinical staffing classifications are outside the scope  
18 of that order would likely leave a void this court would need to then fill with a further ruling. *See*  
19 Reporter’s Transcript of Proceedings (5/14/21 RT), ECF No. 7180, at, *e.g.*, 32. Were a further  
20 order become necessary, the information provided by the Special Master in his monitoring reports  
21 would be useful to the court as it considered such a question.

22 Defendants’ second objection is overruled.

23 IV. Defendants’ Third Objection

24 Defendants next object to the Special Master’s finding that “the parties have  
25 bargained to an impasse” over the use of therapeutic treatment modules (TTMs) in inpatient  
26 programs and that “[a]ny resolution regarding the use of TTMs in inpatient programs will have  
27 to be reached through litigation.” ECF No. 7051 at 6 (quoting ECF No. 7039 at 36).

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1           The parties have now settled their dispute over the use of TTMS in inpatient  
2 settings and the court has approved their settlement agreement. ECF Nos. 7392, 7456. This  
3 objection is moot.

4           V.       Defendants' Fourth Objection

5           Defendants' fourth objection is focused on the Special Master's fifth  
6 recommendation concerning defendants' compliance with the least restrictive housing (LRH)  
7 policy the defendants implemented beginning in late 2015.<sup>5</sup> ECF No. 7051 at 7-8. In the Report,  
8 the Special Master suggests the LRH policy is not being effectively applied and he recommends  
9 development of a specific monthly report to be provided by defendants to the Special Master and  
10 plaintiffs to focus specific information about class members who are in inpatient care and outside  
11 their LRH. *See* ECF No. 7039 at 117-119.

12           While defendants take issue with the Special Master's assessment of the LRH  
13 process and the corresponding recommendation, *see* ECF No. 7051 at 7-8, they do not dispute the  
14 general need to assess compliance with the LRH process. *Id.* at 7. They also represent to the  
15 court, as they did to the Special Master, that they "will work closely with the Special Master to  
16 determine what information" can be provided to track inpatient class members who are not  
17 housed at their LRH. *Id.* at 11; ECF No. 7051-1 at 13.

18           As explained in the court's March 24, 2017 order, defendants developed the LRH  
19 policy following a series of hearings held by the court in August 2015 "to address the re-  
20 emergence of waitlists for inpatient hospital beds for class members." ECF No. 5583 at 15. The  
21 court acknowledges defendants' commitment to this policy and the Special Master's ongoing  
22 dedication to working with defendants to ensure the policy's successful implementation and  
23 corresponding impact on inpatient waitlists. That said, for five years, defendants have been under  
24 a court order to operate their mental health delivery system in full compliance with the  
25 established remedial timelines for transfer to inpatient care. *See* April 19, 2017 Order, ECF No.  
26 5610, at 13. The court will not at this time issue further interim orders regarding access to  
27 inpatient care. Consistent with their representation to the Special Master and this court, *see* ECF

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28           <sup>5</sup> *See* March 24, 2017 Order, ECF No. 5583 at 15 (discussing the LRH policy).

1 No. 7051 at 11, and the Special Master’s authority under the Order of Reference, ECF No. 640,  
2 the court expects defendants to cooperate fully with the Special Master in his request for regular  
3 reporting to track class members who are not housed at their LRH.

4 VI. Defendants’ Fifth Objection

5 Defendants’ fifth objection is a list of “factual inaccuracies” raised with the  
6 Special Master in response to the draft Report. Defendants contend each remains uncorrected in  
7 the Inpatient Program Report. The court reviews each objection below.

8 A. California Institution for Women (CIW) PIP

9 The Special Master reports that “[a]t the CIW-PIP, patients reported a lack of  
10 socks and new underwear after a shower. Patients also reported that after sending clothes to  
11 laundry, clothing in incorrect sizes was returned to them.” ECF No. 7039 at 111. Defendants  
12 object to the Special Master’s failure to amend the draft report to describe these reports as  
13 unsubstantiated. ECF No. 7051 at 8. In the Report, the Special Master reports what the *Coleman*  
14 monitors were told by patients in the CIW-PIP. He takes no position on whether, if at all, those  
15 reports were accurate. There is no evidence the Report is clearly erroneous in its description of  
16 what the patients reported to the *Coleman* monitors, and no showing that the Special Master had  
17 any duty to substantiate the patient reports. In this context, providing defendants with  
18 information about what patients are reporting to him is sufficient. This objection is overruled.

19 The Special Master also reports that

20 At CIW-PIP, patients accessed the law library through a computer  
21 kiosk available in the housing unit. However, there were several  
22 problems with law library access. Staffing limitations hindered  
23 patients’ ability to navigate the computer kiosk system and legal  
forms were only made available if a patient filled out a Form 22  
request. Further, patients were not aware of a policy providing access  
to the law library resources only during Third Watch.

24 ECF No. 7039 at 114. In their response to the draft Report, defendants asserted that “CIW’s law  
25 library access logs show that patients were provided consistent access to the law library” and they  
26 object to the Special Master’s failure to amend the Report to “correct statements . . . that were not  
27 substantiated by the law library’s access logs.” ECF No. 7051 at 8, 17. Defendants have not

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1 included any law library access logs or any other evidence with their objections and thus have not  
2 shown these findings are clearly erroneous. This objection is overruled.

3 B. SVSP

4 The Special Master reports that the “SVSP-PIP reported difficulty with access to  
5 loaner crank radios during the review period and at the time of the site visit. No reason was  
6 provided for the lack of access.” ECF No. 7039 at 199. Defendants object to the Special  
7 Master’s failure to incorporate into the final report an explanation for the lack of access that  
8 CDCR legal counsel provided in a letter appended to defendants’ response to the draft Report.  
9 ECF No. 7051 at 8. The statement of counsel is not evidence that would necessarily require the  
10 Special Master to correct his final Report. Moreover, the letter with the explanation is included in  
11 Attachment B to the Report, ECF No. 7039-2 at 15, and CDCR’s assertion is therefore part of the  
12 record. This objection is overruled.

13 VII. Defendants’ Response to the Special Master’s Recommendations

14 The Special Master recommends the court enter an order with five separate  
15 directives. Each is addressed in turn.

16 A. First Recommendation

17 The Special Master’s first recommendation is:

18 To the extent necessary to remedy any deficiencies identified in the  
19 foregoing report, the CDCR and DSH defendants, under the guidance  
20 and supervision of the Special Master, and with input from the  
21 plaintiffs as appropriate, shall develop plans within 90 days to  
22 provide structured therapeutic activities, unstructured out-of-cell  
activities, treatment planning, and individual treatment, including for  
maximum custody patients consistent with a psychiatric inpatient  
level of care, as well as implement a system for tracking and  
reporting adherence to the standards developed.

23 ECF No. 7039 at 118. Defendants contend the recommendation “is too vague and not tied to  
24 specific, identified issues in the report” and they request that any order “recognize the need for  
25 greater clarity.” ECF No. 7051 at 9.

26 While defendants raised this objection with the Special Master in response to his  
27 draft report, they also stated in their response that, subject to their requests for clarification, they  
28 expected “to develop and submit plans to the Special Master within 90 days” and that

1 “implementation of a system for tracking and reporting adherence to the standards developed will  
2 require additional time. . . .” Thorn Decl., Attach. A, ECF No. 7051-1 at 11-12. The court  
3 accepts the representations defendants made to the Special Master in their November 23, 2020  
4 letter responding to the Draft Report, *id.*, on their face and will bear them in mind in reviewing  
5 future monitoring reports and recommendations. The court declines to issue an order on this  
6 recommendation at this time.

7 B. Second Recommendation

8 The second recommendation provides:

9 The *Coleman* Special Master shall continue to work with the CDCR  
10 defendants, and with input from the plaintiffs as appropriate, to  
11 complete staffing plans for their inpatient programs covering all  
required disciplines.

12 ECF No. 7039 at 118. As required by court order, ECF No. 7162, on July 21, 2021, defendants  
13 filed the CDCR PIP Staffing Plan for Fiscal year 2021/22. ECF No. 7245. The second  
14 recommendation is moot.

15 C. Third Recommendation

16 The third recommendation reads as follows:

17 Under the guidance and supervision of the Special Master, and with  
18 input from the plaintiffs as appropriate, the CDCR and DSH  
19 defendants shall continue to refer, transfer and admit *Coleman* class  
20 members to appropriate inpatient programs in compliance with the  
requirements of the Program Guide and consistent with public health  
best practices in the circumstances of the COVID-19 pandemic.

21 ECF No. 7039 at 118. Defendants contend this is redundant of what is required by this court’s  
22 April 24 and May 7, 2020 orders and is thus unnecessary.

23 The court’s April 24, 2020 order provides in relevant part:

24 Program Guide requirements for transfer of class members to DSH  
25 inpatient hospital beds are temporarily modified to include COVID-  
26 19 screening in accordance with the protocols presented to this court  
and agreed upon by the parties as cited above.

27 April 24, 2020 Order, ECF No. 6639, at 11; *see also* May 7, 2020 Order, ECF No. 6660, at 2.

28 The Special Master’s recommendation is broader than the modification the court authorized in its

1 April 24 and May 7, 2020 orders: he recommends defendants continue to meet Program Guide  
2 requirements for referral, transfer, and admission to inpatient programs while also following  
3 “public health best practices in the circumstances of the COVID-19 pandemic.” ECF No. 7039 at  
4 118.

5 Appendix A to the May 17, 2020 Joint Report Addressing Current COVID-19  
6 Related Departures From Program Guide Requirements includes a list of current departures from  
7 Program Guide requirements for transfer to inpatient care due to the COVID-19 pandemic. *See*  
8 ECF No. 7176 at 21-24. At the status conference on May 14, 2021, the court directed the parties  
9 to forthwith include in these monthly Joint Reports “deactivation schedules for each departure,  
10 including anticipated dates for lifting each departure as well as the actual date a departure is  
11 lifted.” ECF No. 7162. The court issued this order in recognition of the fact that lessons learned  
12 from the COVID-19 pandemic<sup>6</sup> may ultimately lead to presentation of some “proposed  
13 modifications to the Program Guide.” Reporter’s Transcript of Proceedings (5/14/21 RT), ECF  
14 No. 7180, at 19. This process supersedes the Special Master’s third recommendation, which the  
15 court therefore declines to adopt.

16 D. Fourth Recommendation

17 The fourth recommendation provides:

18 Under the guidance and supervision of the Special Master, and with  
19 input from the plaintiffs as appropriate, the CDCR defendants shall  
20 develop and file plans with the court within 180 days for providing  
21 appropriate treatment space for clinical services and activities (e.g.  
22 suicide prevention, IDTTs, structured therapeutic activities,  
unstructured out-of-cell activities, and individual treatment) in  
Facilities C5 and C6 at SVSP-PIP or implement alternatives to the  
use of Facilities C5 and C6 at SVSP-PIP for inpatient care.

23 ECF No. 7039 at 118. The Special Master has informed the court that defendants are developing  
24 this treatment space. This recommendation is therefore moot.

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28 <sup>6</sup> These lessons are the subject of a report filed by defendants on June 14, 2021. ECF No. 7196.  
Plaintiffs filed a response to defendants’ report on July 19, 2021. ECF No. 7241.

1 E. Fifth Recommendation

2 As noted in Section IV above, the fifth recommendation would require defendants  
3 to develop a specific monthly report to provide to the Special Master and plaintiffs concerning the  
4 LRH process. Defendants inform the court they have not had sufficient time to determine  
5 whether they will be able to provide all of the information listed by the Special Master but they  
6 are committed to working with him to determine what information is available to “assist the  
7 Special Master in tracking patients at an inpatient level of care who are not housed in their LRH.”  
8 ECF No. 7051 at 11.<sup>7</sup> The court is heartened by this commitment. As discussed above, given the  
9 continuing orders regarding timely access to inpatient care, the court will not at this time issue  
10 additional specific orders concerning steps defendants should take to comply with those orders.

11 For all of the foregoing reasons, IT IS HEREBY ORDERED that:

- 12 1. Defendants’ objections, ECF No. 7051, to the Special Master’s January 28,  
13 2021 Monitoring Report on the Mental Health Inpatient Care Programs for  
14 Inmates of the California Department of Corrections and Rehabilitation are  
15 overruled or deemed moot;
- 16 2. The findings in the Special Master’s January 28, 2021 Monitoring Report on  
17 the Mental Health Inpatient Care Programs for Inmates of the California  
18 Department of Corrections and Rehabilitation, ECF No. 7039, are adopted in  
19 full; and

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24 <sup>7</sup> It is not clear whether defendants have followed through on this commitment. Defendants’  
25 objections were filed February 8, 2021. On May 17, 2022, as part of his comprehensive twenty-  
26 ninth round of monitoring in this action the Special Master filed a monitoring report on inpatient  
27 mental health care at the six PIPs operated by CDCR. ECF No. 7555. There, the Special Master  
28 reports that “there was a downward trend of patients housed above their LRH designation in the  
PIP.” ECF No. 7555 at 115. To the extent the Special Master requires additional information or  
reports from defendants in aid of full utilization of the LRH process, the court expects and  
anticipates defendants will follow through on the commitments they have made to the court and  
the Special Master.

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3. For the reasons explained in this order, the court declines to adopt the Special Master's recommendations for additional court orders.

DATED: August 16, 2022.

  
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CHIEF UNITED STATES DISTRICT JUDGE