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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

The court held a focused evidentiary hearing on October 23, 2020, to address class member access to Department of State Hospitals (DSH) inpatient mental health programs. The parties filed final exhibit lists on October 30, 2020. ECF Nos. 6931, 6933. Defendants filed objections to plaintiffs’ request to admit evidence after the close of witness testimony. ECF No. 6932. Plaintiffs filed a response to the objections accompanied by two declarations. ECF Nos. 6939, 6943, 6944. On November 8, 2020, defendants moved to strike one of plaintiffs’ declarations, ECF No. 6945; plaintiffs opposed the motion, ECF No. 6947. In late 2020, the parties filed several briefs related to issues raised at hearing. *See* ECF Nos. 6948, 6949, 6960, 6975, 6976. On December 11, 2020, plaintiffs moved to strike evidence filed by defendants with their supplemental brief, ECF No. 6982; defendants opposed the motion, ECF No. 6997. As required by the court, ECF No. 7029, on January 28, 2021 defendants filed an update on the status

1 of admissions to DSH programs, ECF No. 7041. Also as required by the court, ECF No. 7107,  
2 the parties have filed briefing on whether the court should find the matters raised at the  
3 evidentiary hearing moot. ECF Nos. 7117, 7119.

4 Before the evidentiary hearing, in an order filed May 7, 2020, the court identified three  
5 issues for consideration at the hearing:

6 (1) as required by the April 24, 2020 order, have DSH and CDCR  
7 been complying with the Program Guide requirements, as modified  
8 by the temporary addition of COVID-19 screening, for transfer of  
9 class members to inpatient hospital beds; (2) if they are not  
complying with those requirements, in what way or ways are they  
deviating from those requirements; and (3) what is the rationale for  
any deviation.

10 May 7, 2020 Order, ECF No. 6660, at 2. Following the hearing, as noted in the March 26, 2021  
11 order to show cause, ECF No. 7107, during the week of March 8, 2021, the Special Master  
12 informed the court (1) there was at that time no wait list for class member access to DSH  
13 inpatient beds; (2) DSH was following appropriate quarantine and isolation policies as required  
14 by the COVID-19 pandemic, which allowed facilitation of class member transfer to DSH  
15 inpatient programs; (3) DSH and the California Department of Corrections and Rehabilitation  
16 (CDCR) had recently resumed working collaboratively with the Special Master to review all class  
17 members' referrals to inpatient hospital beds; and (4) that collaboration was appropriately  
18 informed by public health considerations and had, since its resumption at least until the week of  
19 March 8, 2021, resulted in compliance with the requirements of the April 24, 2020 order. March  
20 26, 2021 Order to Show Cause, ECF No. 7107, at 2. Based on this information, the court issued  
21 the order directing the parties to show cause in writing why the court should not find moot the  
22 matters raised at the October 23, 2020 evidentiary hearing.

23 In their brief responding to the order to show cause, defendants contend the specific issues  
24 identified in the court's May 7, 2020 order are moot, *see* ECF No. 7117 at 4-5, but that another  
25 question concerning the scope of defendant Clendenin's authority to act in a public health  
26 emergency remains, *id.* at 5-7. Plaintiffs contend the issues are not moot because class members  
27 have continued to experience extended delays in access to necessary inpatient care and defendants  
28 are over-relying on the COVID-19 exception to the Program Guide transfer timelines, *see* April

1 24, 2020 Order, ECF No. 6639, at 11. ECF No. 7119 at, *e.g.*, 3. For the reasons explained below,  
2 the court declines to make retrospective factual findings based on the evidence adduced at the  
3 October 2020 hearing or to make further remedial orders at this time on the issues raised at that  
4 hearing.

5 The relief ordered in this action is injunctive relief, which equitable and operates  
6 prospectively. At this stage, as this court has reviewed in numerous prior orders, these  
7 proceedings are governed by longstanding court directives ordering that injunctive relief and  
8 remedial plans prepared in accordance with those orders. After more than twenty-five years of  
9 remedial effort, the court expects and understands that the need for new forms of relief should be  
10 exceedingly rare. At the same time, it is possible that discreet needs for modification of existing  
11 injunctions may arise until this court finds, or all stakeholders agree, that a durable remedy has  
12 been fully implemented. As set out above, the issues presented at the October 2020 hearing  
13 related to the efficacy of the April 24, 2020 modification to existing injunctive relief governing  
14 transfers of class members to Department of State Hospital (DSH) programs for necessary  
15 inpatient care entered after the onset of the COVID-19 pandemic; they also relate to defendants'  
16 application of that modification and whether further modifications to the existing relief are  
17 required. *See* ECF No. 6639 at 10.

18 Courts retain the authority to modify injunctions based on new or changed circumstances.  
19 *See United States v. Swift & Co.*, 286 U.S. 106, 114 (1932).

20 The source of the power to modify is of course the fact that an  
21 injunction often requires continuing supervision by the issuing court  
22 and always a continuing willingness to apply its powers and  
processes on behalf of the party who obtained that equitable relief.

23 Firmness and stability must no doubt be attributed to  
24 continuing injunctive relief based on adjudicated facts and law, and  
neither the plaintiff nor the court should be subjected to the  
25 unnecessary burden of re-establishing what has once been  
26 decided. Nevertheless the court cannot be required to disregard  
significant changes in law or facts if it is 'satisfied that what it [h]as  
27 been doing has been turned through changing circumstances into an  
instrument of wrong.' *United States v. Swift & Co.*, *supra*, 286 U.S.  
at pages 114—115, 52 S.Ct. at page 462. A balance must thus be

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1 struck between the policies of res judicata and the right of the court  
2 to apply modified measures to changed circumstances.

3 *Sys. Fed'n No. 91, Ry. Emp. Dep't, AFL-CIO v. Wright*, 364 U.S. 642, 647–48 (1961).

4 An injunction is an exercise of a court's equitable authority, to be  
5 ordered only after taking into account all of the circumstances that  
6 bear on the need for prospective relief. *See United States v. Swift &*  
7 *Co.*, 286 U.S. 106, 114, 52 S.Ct. 460, 76 L.Ed. 999 (1932). See  
8 also *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312, 102 S.Ct.  
9 1798, 72 L.Ed.2d 91 (1982); *Hecht Co. v. Bowles*, 321 U.S. 321, 329,  
10 64 S.Ct. 587, 88 L.Ed. 754 (1944); 11A C. Wright, A. Miller, & M.  
11 Kane, *Federal Practice and Procedure* § 2942, pp. 39–42 (2d  
12 ed.1995) (hereinafter *Wright & Miller*). Equitable relief is not  
13 granted as a matter of course, *see Weinberger*, 456 U.S., at 311–312,  
14 102 S.Ct. 1798, and a court should be particularly cautious when  
15 contemplating relief that implicates public interests, *see id.*, at 312,  
16 102 S.Ct. 1798 (“In exercising their sound discretion, courts of equity  
17 should pay particular regard for the public consequences in  
18 employing the extraordinary remedy of injunction”); *Harrisonville*  
19 *v. W.S. Dickey Clay Mfg. Co.*, 289 U.S. 334, 338, 53 S.Ct. 602, 77  
20 L.Ed. 1208 (1933) (“Where an important public interest would be  
21 prejudiced, the reasons for denying the injunction may be  
22 compelling”).

23 *Salazar v. Buono*, 559 U.S. 700, 714–15 (2010).

24 Fundamentally, the issues addressed by the October 2020 hearing included the Eighth  
25 Amendment right of class members to timely access to inpatient mental health care and the public  
26 interest in management of the COVID-19 pandemic in congregate living facilities, here state  
27 prisons and hospitals. Management of the COVID-19 pandemic has not followed a straight line  
28 given the initial emergency occasioned by its detection and the continual changes in the public  
health landscape as the COVID-19 virus took hold and then mutated repeatedly. These  
circumstances only serve to heighten the imperative that this court proceed with caution when  
considering additional relief. The Special Master's March 2021 report to the court showed that  
between October 2020, when the hearing was held, and March 2021, defendants had made  
substantial progress in incorporating COVID-19 protocols into the inpatient care transfer process  
and implementing a collaborative process for transferring class members to DSH for necessary  
inpatient care under the circumstances of the pandemic. The report supports the conclusion that  
findings predating those accomplishments would serve no useful purpose. Plaintiffs' response to  
the order to show cause also supports the conclusion that relevant facts on the ground continue to

1 evolve. *See* ECF No. 7119 at, *e.g.*, 2-4. *See also* *Ahlman v. Barnes*, 2020 WL 3547960, slip op.  
2 at 5 (9th Cir. 2020) (recognizing “circumstances surrounding the COVID-19 pandemic are  
3 evolving rapidly”). Finally, defendants’ monthly reports on transfers to inpatient care show that  
4 for at least the past seven reporting months (March 2022 through September 2022), no class  
5 members have been waiting beyond Program Guide timelines for transfer to inpatient care at  
6 DSH programs, as those timelines were modified by the April 24, 2020 order. *See* ECF Nos.  
7 7628 at 4, 7612 at 4, 7604 at 4, 7590 at 4, 7572 at 4, 7552 at 4, and 7529 at 4.

8 Here, the extended nature of defendants’ effort to complete remediation in this action and  
9 the need for public officials to respond rapidly, nimbly, and flexibly to the demands of the  
10 COVID-19 pandemic both counsel restraint. The record shows the remedial framework  
11 concerning timely transfers to inpatient care took approximately two decades to develop and  
12 implement; it also shows the onset of the COVID-19 pandemic interrupted progress toward full  
13 implementation of this part of the remedy. The court’s April 24, 2020 order represents a specific  
14 and necessary modification to account for the COVID-19 pandemic. The information the Special  
15 Master provided to the court in March 2021 indicated the modification had been incorporated into  
16 an updated and collaborative transfer process. Since March 2022, defendants’ reports on waitlists  
17 for access to inpatient care at DSH show only four inmates for whom the COVID-19 exception  
18 was invoked when those inmates were referred to inpatient care; all three were transferred when  
19 the exception was cleared. *See* ECF Nos. 7628 at 4, 7590 at 5, 7572 at 4. There is no basis in the  
20 current record for further modification to the court’s orders concerning timely access to inpatient  
21 mental health care; concomitantly, this information confirms there is no need for this court to  
22 make retrospective factual findings from the October 2020 evidentiary hearing.

23 In their response to the order to show cause defendants suggested an ongoing issue with  
24 respect to the court’s determination in its April 24, 2020 that DSH Director Stephanie Clendenin  
25 was required to seek modification of this court’s orders before relying exclusively on state law to  
26 suspend class members’ admission to DSH inpatient programs. As this court has previously  
27 noted, the April 24, 2020 order and the subsequent May 7, 2020 order “stand for the basic and  
28 unremarkable proposition that any party bound by a court order may not act unilaterally in

1 violation of that order but, instead, must seek relief from the court that issued the order.” June 17,  
2 2020 Order, ECF No. 6730, at 6. Nothing in the case on which defendants rely, *Jacobson v.*  
3 *Commonwealth of Massachusetts*, 197 U.S. 11 (1905), alters that proposition. *Jacobson*  
4 determined that the state may, in the exercise of its police power and without running afoul of the  
5 United States Constitution, enact reasonable regulations to protect the public health and safety,  
6 including by delegating specific public health decision-making to local governing bodies.  
7 *Jacobson*, 197 U.S. at 24-31. *Jacobson* did not involve the impact of federal court orders on state  
8 actors and does not undermine the basis of the court’s April 24, 2020 and May 7, 2020.<sup>1</sup>

9 In the March 26, 2021 order to show cause, the court also signaled it anticipated resolving  
10 outstanding evidentiary disputes from the post-hearing briefing following the October 2020  
11 hearing in order to make the record clear. *See* ECF No. 7107 at 3. After further consideration,  
12 the court finds such resolution unnecessary. For the reasons explained in this order, the court  
13 makes no retrospective factual findings based on any evidence tendered at the October 2020  
14 hearing, nor does it order any modification to existing injunctions. Defendants’ October 30, 2020  
15 objections to plaintiffs’ request to admit evidence after hearing, ECF No. 6932, are sustained  
16 without prejudice to plaintiffs’ right to seek, as appropriate, admission of some or all of that  
17 evidence should it become relevant in future proceedings. The dispute over Dr. Pablo Stewart’s  
18 testimony concerning eleven class members, *see* Reporter’s Transcript of Proceedings (RT  
19 10/23/20), ECF No. 6935 at, *e.g.* 271, is mooted by this order.<sup>2</sup> Defendants’ November 8, 2020  
20 motion to strike the declaration of Amy Xu will be granted without prejudice to plaintiffs’ right to  
21 seek, as appropriate, admission of the declaration and any or all of the exhibits appended thereto  
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23 <sup>1</sup> The court has not imposed sanctions or made any other orders based on its findings concerning  
24 Director Clendenin’s violation of its orders; the only modification ordered by the April 24, 2020  
25 and May 7, 2020 orders permits defendants to conduct COVID-19 screenings prior to transferring  
26 class members to inpatient care. *See* ECF No. 6730 at 6.

26 <sup>2</sup> The court nevertheless notes with concern the apparent, unexplained contradiction between  
27 defense counsel’s representation at hearing concerning access to the medical records for those  
28 eleven inmate patients, *see* RT 10/23/20, ECF No. 6935 at 270, and Dr. Mehta’s subsequent  
testimony concerning his review of eleven records identified by, presumably, Dr. Stewart, *id.* at  
302.


1 should they become relevant in future proceedings. Similarly, plaintiffs' December 11, 2020  
2 motion to strike five declarations submitted by defendants will be granted without prejudice to  
3 defendants' right to seek, as appropriate, admission of any or all of the declarations should they  
4 become relevant in future proceedings.

5 In accordance with the above, the court declines to make any factual findings or additional  
6 remedial orders based on the matters considered at the October 23, 2020 evidentiary hearing.

7 IT IS HEREBY ORDERED that:

- 8 1. The evidentiary dispute concerning Dr. Stewart's testimony is mooted by this order;
- 9 2. Defendants' objections to plaintiff's request to admit evidence after hearing, ECF No.  
10 6932, are sustained without prejudice to plaintiffs' right to seek, as appropriate, admission of  
11 some or all of that evidence should it become relevant in future proceedings;
- 12 3. Defendants' motion to strike the declaration of Amy Xu, ECF No. 6945, is  
13 GRANTED;
- 14 4. The declaration of Amy Xu, ECF No. 6944, is STRICKEN, without prejudice;
- 15 5. Plaintiffs' December 11, 2020 motion to strike declarations, ECF No. 6982, is  
16 GRANTED; and
- 17 6. The five declarations filed at ECF Nos. 6976-1 through 5 are STRICKEN, without  
18 prejudice.

19 DATED: October 20, 2022.

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22 CHIEF UNITED STATES DISTRICT JUDGE  
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