

1 No. 7761. As explained below, this order confirms the same ten percent maximum vacancy rate
2 applies to recreation therapists and medical assistants.

3 **I. RECREATION THERAPISTS**

4 Plaintiffs do not object to a ten percent vacancy rate for recreation therapists for purposes
5 of the court's enforcing staffing orders. ECF No. 7761 at 2. Defendants agree the maximum
6 vacancy rate for recreation therapists should be set at ten percent. *Id.* at 7-8.

7 Although plaintiffs do not object to a ten percent rate for enforcement purposes, they note
8 their belief that the vacancy rate for recreation therapists is covered by an order the court
9 previously issued in 1999. *See* ECF No. 7761 at 2 (citing July 26, 1999 Order, ECF No. 1055).
10 That 1999 order required the California Department of Corrections and Rehabilitation (CDCR) to
11 maintain vacancy rates in staffing categories other than psychiatrists and psychiatric social
12 workers "at present or comparable levels." ECF No. 7761 at 2 (quoting July 26, 1999 Order at 4).
13 Plaintiffs cite evidence showing the vacancy rate for recreation therapists was four percent at that
14 time. *Id.* (citing Special Master's Report on Staffing Vacancies, ECF No. 1032, at 3, 14).

15 The 1999 order did not perpetually cap the vacancy for recreation therapists at four
16 percent; rather it allowed different vacancy rates if those rates were "comparable" to the rate at
17 the time the order issued. ECF No. 1055 at 4. The court finds a ten percent vacancy rate is
18 "comparable" in context. Just four months before the court issued the 1999 order, the vacancy
19 rate had been 12.5 percent. ECF No. 1032 at 3. And in a report underlying the 1999 order, the
20 Special Master had used a ten percent vacancy rate as a guidepost for positions other than
21 psychiatrists and psychiatric social workers. *See id.* at, *e.g.*, 3, 13-14.

22 For these reasons, defendants must maintain a maximum ten percent vacancy rate for
23 recreation therapists. The court's 1999 order is clarified accordingly. For purposes of the
24 February 28, 2023 order, then, the court will calculate the number of unfilled recreation therapist
25 positions by multiplying the total number of allocated recreation therapist positions by 0.90, then
26 subtracting the total number of filled positions from that result.

1 **II. MEDICAL ASSISTANTS**

2 **A. Positions of the Parties**

3 Plaintiffs contend the vacancy rate for medical assistants should also be set at 10 percent.
4 ECF No. 7761 at 3. Defendants argue the court should not set a maximum vacancy rate for
5 medical assistants for several reasons. *Id.* at 9. They contend the medical assistant classification
6 is not part of the 2009 Staffing Plan and that allocation of medical assistant positions is not based
7 on the population of mentally ill inmates. *Id.* at 7, 13. They also argue medical assistants are
8 used almost exclusively as telepresenters for the telepsychiatry program, “are not allocated for
9 on-site psychiatrists” and are just one of many classifications that can be used for telepresenting.
10 *Id.* at 8. Similarly, defendants argue, because people in other classifications work as
11 telepresenters, “a Medical Assistant vacancy does not necessarily equate to an inability to provide
12 access to care” or “indicate that there are insufficient telepresenters available for telepsychiatry
13 contacts.” *Id.* at 9. Finally, defendants argue filled medical assistant positions do not necessarily
14 translate to telepsychiatry assignments. *Id.*

15 Plaintiffs argue defendants have “obfuscate[d] the key issues” rather than “responding to
16 the Court’s directive.” *Id.* at 3. Plaintiffs contend defendants’ position runs afoul of a 2015 court
17 order directing defendants to implement a specific proposal to create a psychiatric medical
18 assistant classification to assist on-site psychiatrists. *Id.* (citing May 18, 2015 Order, ECF No.
19 5307, at 6). Defendants contend their 2015 proposal “was never fully implemented” and claim
20 their use of medical assistants has “transitioned to telepresenting only.” *Id.* at 9. They also
21 contend their 2015 proposal “evolved over the last seven years into the current Medical Assistant
22 classification.” *Id.* at 10. Defendants request “additional time to develop a Medical Assistant
23 staffing plan and allocation that comports with the focus of their current duties, including an
24 appropriate maximum vacancy rate.” *Id.* at 13.

25 **B. Background**

26 In June 2014, the court instructed defendants to “revisit and, as appropriate, revise” their
27 2009 Staffing Plan to resolve ongoing mental health staffing shortages and comply with the
28 maximum mental health staffing vacancy rates required by the court’s June 13, 2002 order, ECF

1 No. 1383. June 19, 2014 Order, ECF No. 5171, at 3-4. In response, defendants proposed a new
2 classification for psychiatric medical assistants (PMAs).

3 Under this proposal, CDCR will assign each psychiatrist a psychiatric medical
4 assistant—an unlicensed technician who will interface with custody and other
5 members of the treatment team. Psychiatric medical assistants will remind patients
6 of appointments, send out physician orders for labs or medication, schedule new
7 appointments, make referrals to therapists and other physicians, meet with the
8 patient prior to the appointment, collect relevant data, and take blood pressures and
9 measure weights. In addition, psychiatric medical assistants will help find treatment
10 rooms to meet patients and schedule with correctional staff to bring a patient to the
11 psychiatrist.

12 ECF No. 5269 at 7. The purposes of this new classification were to ease the administrative
13 burden on psychiatrists, improve recruitment and retention, increase the number of patients
14 CDCR psychiatrists could see, and increase their time treating patients. *Id.* The parties fully
15 briefed the issue. ECF Nos. 5279, 5281, 5286, 5290.

16 After review, the court directed defendants to “move forward” with their PMA proposal
17 and directed the Special Master to report on the status of defendants’ implementation of the
18 proposal. May 18, 2015 Order, ECF No. 5307, at 6. The Special Master made the required
19 report, and the court adopted it. *See* October 10, 2017 Order, ECF No. 5711, at 5 (discussing
20 inclusion of required report in Special Master’s Twenty-Sixth Round Monitoring Report and
21 court’s order thereon). The court then ordered the Special Master to “issue a stand-alone report
22 on the status of mental health staffing and implementation of defendants’ staffing plan.”
23 August 9, 2016 Order, ECF No. 5477, at 9. The Special Master reported defendants were making
24 “sufficient progress on their proposal related to the use of medical assistants” and, finding the use
25 of this classification “has the potential to positively impact the recruitment and retention of
26 psychiatrists” recommended that it “be implemented without further delay.” ECF No. 5564 at 10,
27 28. The parties filed extensive responses to this report, but neither objected to the
28 recommendation about the PMA classification. *See* ECF No. 5711 at 6, 8-10.

29 In the October 10, 2017 order, the court adopted a modified version of the Special
30 Master’s recommendation regarding the PMA program. Specifically, the court ordered
31 defendants to report to the Special Master “at such regular intervals as he may set” on the

1 implementation of the PMA program, among other proposals. *Id.* at 29. The court permitted
2 defendants to raise “with the Special Master the issue of whether full implementation of the PMA
3 program supports a change in staffing ratios for psychiatrists,” but the court required defendants
4 to timely raise and resolve any disputes within the one year deadline set by the order for
5 compliance with staffing requirements. *Id.* at 19, 30. Finally, the court required defendants to
6 develop a telepsychiatry addendum to the Revised Program Guide. *Id.* at 30.

7 **C. Analysis**

8 Defendants are required to meet their constitutional obligations to the plaintiff class,
9 including with respect to adequate mental health staffing. *See* ECF Nos. 5307 at 5, 5711 at 12.
10 Although the court did not expressly order defendants to “fully implement” their 2015 PMA
11 proposal, it did order defendants to “move forward” with that proposal, ECF No. 5307 at 6, and to
12 keep the Special Master informed of its status along with defendants’ implementation of their
13 broader staffing plan, *id.* at 6; *see also* ECF No. 5477 at 8.

14 It now appears defendants have effectively abandoned their original PMA proposal
15 without informing the Special Master or the court. *See* ECF No. 7761 at 9. In defendants’ own
16 words, their plan has “evolved over the last seven years into the current medical assistant
17 classification,” and as a result, “Medical Assistants transitioned to telepresenting only.” *Id.* at 9-
18 10. Today, they say, medical assistants “are not allocated for on-site psychiatrists”; instead, “the
19 Medical Assistant Classification is based on telepsychiatry need.” *Id.* at 8, 12. Contrary to
20 defendants’ claims, they did not keep plaintiffs and the Special Master “aware of” this evolution.
21 *Id.* at 12. Their evidence shows only that the Special Master and plaintiffs were aware by early
22 2020 that defendants would use medical assistants as telepresenters for the new mental health
23 telepsychiatry policy. *See* ECF No. 7761 at 12, citing Special Master 26th through 29th Round
24 Monitoring Report and Ex. B to Decl. of Thorn Decl., ECF No. 7760-2. The record does not
25 support a conclusion defendants ever told plaintiffs, the Special Master, or the court they were
26 abandoning the 2015 PMA proposal. *See* ECF No. 7761 at 3 n.1.

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1 In other words, defendants again have not been fully transparent with the court and
2 Special Master, as required. *See generally Coleman v. Newsom*, 424 F.Supp.3d 925 (E.D. Cal.
3 2019) (order after proceedings on first whistleblower report of misleading data submitted by
4 CDCR Chief Psychiatrist Michael Golding). It should not have to be repeated that, as a general
5 rule, “the importance of defendants’ transparent and accurate reporting is paramount: the court
6 and the Special Master must be able to rely fully on defendants’ representations.” *Id.* at 929. The
7 importance of transparent and accurate reporting applies fully to staffing levels. And the court
8 expressly outlined defendants’ obligations if they sought to modify their staffing plan:

9 Defendants simply must come to terms with the substance of the staffing plan and
10 involve all key stakeholders in working with the proper focus to satisfy it. If, after
11 addressing the problems [the Golding] hearings have exposed, defendants honestly
12 believe that their staffing plan, embodied in court orders, needs to be modified, they
13 have the option, as they always have had, of seeking a modification from the court.
14 Any such request would need to be properly justified and honestly supported, of
15 course. In any event, defendants must acknowledge and account for the substantial
16 findings in this court’s October 11, 2017 order, describing the heavy burden that
17 must be met to support any increase in psychiatrists’ caseloads.

18 *Id.* at 957. Despite this directive, defendants unilaterally and opaquely changed an important
19 component of their 2015 plan to meet their staffing obligations. As a result, as the court moves
20 towards enforcement of the staffing plan it has approved, it will not hesitate to impose sanctions
21 and issue other orders as may prove necessary to bring the staffing component of the *Coleman*
22 remedy to the most just, speedy, and efficient conclusion possible.

23 In the meantime, defendants’ arguments are utterly unpersuasive on their own terms. As
24 plaintiffs correctly note, “[m]edical assistants . . . play a major role in Defendants’ telepsychiatry
25 program.” ECF No. 7761 at 4. The job description included as Attachment A to the Thorn
26 Declaration shows medical assistants play a greater role in the delivery of care through
27 telepsychiatry than telepresenting: they make and record initial observations of patients’
28 conditions and report that to the telepsychiatrist; they observe patients before and after
29 telepsychiatry appointments; they document clinical information in patient charts; they administer
30 life support in emergency situations; they collaborate with the telepsychiatrist to get appropriate
31 treatment to patients; they collaborate with nursing staff to meet the patients’ clinical needs; they

1 assist patients with physical care; they monitor patients on suicide watch until relief arrives; and
2 they contact local staff in the event of emergencies. ECF No. 7760-1 at 26. Indeed, medical
3 assistants appear to be the on-site partners of telepsychiatrists in many key respects. *Id.* Finally,
4 even if the medical assistant classification were used solely for administrative purposes—a
5 finding not supported by the evidence—clerical mental health positions are subject to the July 26,
6 1999 staffing order. *See* ECF No. 1052 at 3, 14 (Special Master’s report on staffing vacancies,
7 including clerical positions among “key mental health staffing positions and vacancies”); ECF
8 No. 1055 at 1, 4 (adopting recommendations in Special Master’s report on staffing vacancies).

9 For these reasons, defendants must maintain a maximum ten percent vacancy rate among
10 medical assistants allocated to the Statewide Mental Health Program. For purposes of the
11 February 28, 2023 order, the number of unfilled medical assistant positions will be calculated by
12 multiplying the total number of allocated medical assistant positions by 0.90, then subtracting the
13 total number of filled positions from that result.

14 **III. PSYCHIATRIC INPATIENT PROGRAMS**

15 Plaintiffs also request the court clarify whether the court’s February 28, 2023 order covers
16 the mental health positions assigned to CDCR’s Psychiatric Inpatient Programs (PIPs). That
17 request was resolved in this court’s March 17, 2023 Order, which clarified the February 28, 2023
18 order does not apply to mental health positions assigned to the CDCR PIPs and required separate
19 vacancy/fill rate reporting for those classifications going forward. *See generally* March 17, 2023
20 Order, ECF No. 7766.

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1 **IV. CONCLUSION**

2 In accordance with the above, IT IS HEREBY ORDERED that:

- 3 1. Defendants shall maintain a maximum ten percent vacancy rate among
4 recreation therapists and the July 26, 1999 order, ECF No. 1055, is deemed
5 clarified accordingly.
- 6 2. Defendants shall maintain a maximum ten percent vacancy rate among
7 medical assistant positions allocated to the Statewide Mental Health
8 Program.
- 9 3. For purposes of the February 28, 2023 order, the calculation for recreation
10 therapists and medical assistants will be made by multiplying the total
11 number of allocated positions in each classification by 0.90, then
12 subtracting the total number of filled positions from each result.

13 DATED: April 11, 2023.



CHIEF UNITED STATES DISTRICT JUDGE