



1 ECF No. 7973. Also on September 27, 2023, defendants filed a request for leave to file a reply to  
2 plaintiffs' response. ECF No. 7974. Defendants' request contains several substantive arguments  
3 related to whether the court should consider the September 22, 2016 memorandum at all and, if  
4 so, how it should be viewed, and does not propose a deadline for submission of a reply. *See*  
5 *generally id.* The court grants defendants' request to the extent it construes the arguments therein  
6 as defendants' reply to plaintiffs' response.<sup>1</sup> On October 3, 2023, plaintiffs timely filed their  
7 response to defendants' objections. ECF No. 7995.

8 For the reasons explained below the court adopts the Special Master's further report and  
9 recommendations in full.<sup>2</sup>

## 10 I. BACKGROUND

11 The court required the Special Master's further report and recommendations on the  
12 STRH/LTRH indicator in its May 24, 2023 order, ECF No. 7847. In his initial report and  
13 recommendations on this indicator, the Special Master reported that "the indicator as written  
14 reports transfers as compliant with the thirty-day requirement for inmate-patients whose transfer  
15 is suspended because of a medical hold." *Id.* at 10 (citing ECF No. 7755 at 17). The Special  
16 Master recommended "defendants modify this 'indicator design to score transfers beyond 30 days  
17 as non-compliant, unless or until the parties negotiate and the court adopts an exception to this  
18 Court-approved policy." ECF No. 7755 at 20, 34.

19 In their objections to the initial report and recommendations, defendants for the first time  
20 raised application of a March 3, 2016 Memorandum, included in the 2021 Program Guide  
21 Update, ECF No. 7333-1, which the court approved on February 7, 2022. The March 3, 2016  
22 memo covers transfers of male inmate-patients (IPs) in the Correctional Clinical Case

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<sup>1</sup> Both plaintiffs' response and defendants' request/reply make clear the parties discussed the memorandum with each other before coming to the court.

<sup>2</sup> By separate order, the court is streamlining the dispute resolution process for data remediation while continuing to allow full opportunities for necessary objections to be brought to the court.

1 Management System (CCCMS) to male STRHs. ECF No. 7333-1 at 456. It provides in relevant  
2 part:

3 Institutions without a designated STRH shall transfer CCCMS IPs retained in  
4 administrative segregation by the Institution Classification Committee (ICC) to a  
5 designated STRH within 30 days of Administrative Segregation Unit (ASU)  
6 placement.

7 *Id.* For IPs identified for CCCMS placement after placement in an ASU, the 30 day period starts  
8 to run “on the date of the Mental Health Placement Chrono” designates the IP for CCCMS care.

9 *Id.* The memo goes on to provide:

10 IPs NOT TRANSFERRED TO AN STRH WITHIN ALLOTTED TIME  
11 FRAME

12 In order to avoid adversely impacting the IP's other custodial or medical needs,  
13 there may be situations where an IP will not be transferred to an STRH within  
14 30 days. Some examples of situations include, but are not limited to, an imminent  
15 Board of Parole Hearing date, medical hold, scheduled transfer to a mainline  
16 placement, scheduled court hearing, pending release to parole within 60 days of  
17 CCCMS ASU placement, and scheduled mental health evaluations for  
18 Mentally Disordered Offender or Sexually Violent Predator screenings.

19 In these instances, the Warden or designee, in coordination with the treating  
20 Mental Health staff, may elect to temporarily retain the IP in their existing ASU.

21 The Warden or designee shall ensure a collaborative approach between  
22 Custody and Mental Health staff is employed to ensure the wellbeing of IPs  
23 housed in non-STRH administrative segregation.

24 Custody and Mental Health staff shall meet daily, during ASU morning  
25 meetings, to discuss any ongoing behavioral issues or concerns, and shall  
26 participate jointly in scheduled Interdisciplinary Treatment Teams and ICCs  
27 to ensure Information is shared. When retention of an IP that would otherwise  
28 meet criteria for placement in an STRH will cause transfer timeframe [*sic*] to  
29 exceed the 30-day mandate, institution classification staff shall specify the  
30 exceptional reason for retention (including mental health considerations) in the  
31 Classification Committee Chrono. A case note shall be placed in SOMS  
32 articulating the case-by-case reason for retention under the "STRH Retention  
33 Note Type."

34 *Id.* at 457.

35 Because defendants had not raised application of this memo with the Special Master, the  
36 court declined to consider their objection and instead referred the issue back to the Special Master  
37 for further consideration. ECF No. 7847 at 10. In his further report and recommendations, the

1 Special Master finds that, while the March 3, 2016 memo “acknowledges transfer delays due to  
2 medical holds,” it “does not contain language sufficient to suspend” the 30 day STRH/LTRH  
3 transfer timeline for purposes of creation of an accurate indicator for STRH/LTRH transfers.  
4 ECF No. 7907 at 7-10. He reports he “has not historically in his monitoring and reporting and  
5 does not now” interpret the March 3, 2016 memorandum as creating a “Court-approved exception  
6 to the 30-day STRH/LTRH transfer timeline.” *Id.* at 10. The Special Master makes two  
7 recommendations:

8 • The medical hold exception in the existing indicator’s documentation should be  
9 removed. All transfers to STRH and LTRH units that exceed 30 days should be  
10 scored as not satisfying the 30-day transfer business requirement.

11 • Concurrently, the indicator should include drill-down information including any  
12 explanation for delayed transfers, including medical holds.

13 *Id.* at 15. His recommendation is based in large part on the court’s directive that “each key  
14 indicator must be designed and operationalized to accurately capture the corresponding  
15 information gathered and reported on by the Special Master as part of his monitoring  
16 responsibilities” as well as his express recognition that “[t]he ultimate question of what  
17 compliance threshold will apply to this indicator, and the extent to which patient medical holds  
18 impact compliance, remains with the Court for determination at a future date.” ECF No. 7907 at  
19 14 (citing ECF No. 7847 at 9; also citing June 30, 2021 Order, ECF No. 7216 at 4).

20 Defendants do not object to the second recommendation, that the indicator be designed to  
21 include “drill-down information including any explanation for delayed transfers, including  
22 medical holds.” They do, however, object on several grounds to the revised recommendation to  
23 remove the medical hold exception from the indicator’s documentation. First, they contend it  
24 runs afoul of a provision of the California Department of Corrections and Rehabilitation (CDCR)  
25 Health Care Departmental Operations Manual that provides for use of a medical classification  
26 system in making patient placement decisions. ECF No. 7939 at 2 (quoting HCDOM 1.2.14).  
27 That system includes “temporary medical hold[s],” which are “used when a patient requires  
28 medically necessary health care services, and it is medically prudent to provide those services at  
29 the institution where the patient is currently housed.” *Id.* at 16. Defendants contend the March 3,

1 2016 memorandum “expressly contemplates not transferring a patient within 30 days because of a  
2 medical hold.” *Id.* at 2. They contend the STRH/LTRH indicator must be designed to report  
3 compliance with the required transfer timelines “as modified by appropriate timeframe  
4 exceptions,” here, as covered by the March 3, 2016 memorandum. *Id.* at 3. They argue the  
5 Special Master’s reasons for recommending the medical hold exception be removed from the  
6 STRH/LTRH indicator are “misguided and clearly erroneous.” *Id.* at 4-7.

7 In response to defendants’ objections, plaintiffs point to a September 22, 2016  
8 Memorandum entitled “Reasons for Retaining Inmates in Segregation, Removing Medical Hold  
9 from COMPSTAT.” ECF No. 7995, Ex. A. This memorandum is included in the 2021  
10 Compendium of Custody-Related Remedial Requirements (hereafter “Compendium”), *see id.* at  
11 ECF No. 7333-2 at 5.<sup>3</sup> The memorandum provides in relevant part:

12 The purpose of this memorandum is to reiterate that inmates shall not be housed or  
13 retained in segregated housing due to a medical hold or pending Department of State  
14 Hospital placement. Reasons for placement in segregated housing are detailed in  
15 California Code of Regulations, Title 15, Division 3, Section 3335, *Administrative*  
16 *Segregation*.

17 The COMPSTAT Administrative Segregation Unit (ASU) tracking system has been  
18 modified by removing "Medical Hold" as an option for retaining inmates in  
19 segregated housing.

20 ECF No. 7995 at 9. Acknowledging that this memorandum apparently was not considered by the  
21 Special Master or the parties at earlier stages of the dispute resolution process, plaintiffs contend  
22 it is “highly relevant to the instant dispute” and “bolsters” the Special Master’s recommendation.  
23 *Id.* at 3-4.

24 Defendants contend plaintiffs do not explain why they could not have raised this  
25 memorandum earlier, and that the court should not consider it since it was not first presented to  
26 the Special Master. ECF No. 7974 at 2. Defendants also contend the memorandum does not  
27 apply to the current dispute, arguing the memorandum “only resolves whether a patient can be  
28 held in segregation solely for a medical hold and does not preclude retention of an inmate in

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<sup>3</sup> The Compendium is one “of the two primary remedial plans in this action.” December 17, 2020 Order, ECF No. 6996, at 1. The court approved the 2021 Update to the Compendium on February 7, 2022. *See* February 7, 2022 Order, ECF No. 7456, at 3.

1 segregation who has both a medical hold and a valid retention reason in accordance with Title  
2 15”; they also say the memorandum “does not pertain to transfer timelines or mandate that  
3 transfers between segregation units are required notwithstanding a medical hold.” *Id.*

## 4 **II. REQUIRED CERTIFICATION**

5 Before turning to its legal analysis, the court addresses a housekeeping matter. On  
6 November 16, 2017, the court issued an order that requires “each brief filed by any party [to] be  
7 accompanied by counsel’s certification that they have read all court orders relevant to any issue  
8 addressed in such brief, including a list of those orders.” November 6, 2017 Order, ECF No.  
9 5726, at 10. Although all of the documents filed by defendants in connection with the Special  
10 Master’s reports and recommendations on this data remediation issue cite to various court orders,  
11 none contain the required certification. *See generally* ECF Nos. 7805; ECF No. 7939; ECF No.  
12 7974. This is not the first time defendants have failed to comply with the certification  
13 requirement. *See, e.g.*, May 14, 2021 Minute Order, ECF No. 7162 (disregarding defense reply  
14 due to noncompliance with the certification requirement).

15 Going forward, the court will disregard all briefs, including but not limited to briefing on  
16 reports from the Special Master, filed without the required certification, nor will the court allow  
17 amendment to any disregarded brief.

## 18 **III. LEGAL STANDARD**

19 The court adopts the Special Master’s findings of fact unless those findings are “clearly  
20 erroneous.” December 11, 1995 Order of Reference, ECF No. 640, at 8; *see also* ECF No. 7847  
21 at 8-9. “A finding is ‘clearly erroneous’ when although there is evidence to support it, the  
22 reviewing court on the entire evidence is left with the definite and firm conviction that a mistake  
23 has been committed.” *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948) (quoted in  
24 *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985)).

## 25 **IV. ANALYSIS**

26 The issue before the court is whether in the data remediation process documentation, i.e.,  
27 business rules, for the STRH/LTRH timeline indicator should be written so that periods when

1 inmate-patient are subject to medical holds are exempted from the thirty-day timeline for  
2 STRH/LTRH transfer. The Special Master recommends that such periods not be exempted from  
3 the STRH/LTRH transfer timeline indicator and, instead, be explained together with any other  
4 periods of delay in “drill-down information” for the indicator. ECF No. 7907 at 15.

5 Defendants do not object to including drill-down information, including medical holds, in  
6 the indicator. Their objections focus almost entirely on how adoption of the Special Master’s  
7 recommendation will impact their compliance with the STRH/LTRH transfer timeline remedial  
8 requirements. In so doing, they ignore the fact, noted by the Special Master, that the ultimate  
9 question of compliance with this requirement is for the court. Except as discussed below,  
10 defendants’ objections are properly construed as arguments for excluding medical hold periods  
11 from the requirement of compliance with STRH/LTRH transfer timelines ultimately required by  
12 the court.

13 In Section II of their filing, defendants object on several grounds to the Special Master’s  
14 findings as to why the March 3, 2016 policy should not be treated as a court-approved exception  
15 to the 30-day STRH/LTRH transfer timeline. ECF No. 7939 at 3-7. Only some aspects of these  
16 objections require discussion; none have merit.

17 First, the Special Master does not recommend that the court “ignore CDCR policy and  
18 require the indicator to be programmed without accounting for patients on medical holds.” *Id.* at  
19 3. To the contrary, he recommends the indicator include drill-down information on transfer  
20 delays, including those caused by medical holds. ECF No. 7907 at 15. As noted, defendants do  
21 not object to this recommendation.

22 Second, the Special Master’s observations about the absence of a specific definition of  
23 medical hold in the March 3, 2016 memorandum or how it would be operationalized provide  
24 defendants the type of guidance required to ensure that defendants’ data reports are fully  
25 transparent and accurate and, most importantly, free of any risk of “end runs and hiding the ball”  
26 that has infected defendants’ remedial reporting and required the current overhaul of the mental  
27 health data reporting system. *See generally* December 17, 2019 Order, ECF No. 6427.

28 Third, and importantly, the Special Master’s findings that the language of the March 3,

1 2016 policy is not comparable to court-approved exceptions to other timelines is not “an apples to  
2 oranges comparison,” ECF No. 7939, at 4. It bears directly on the issue presented: how to ensure  
3 that data presented to the court to assess defendants’ compliance with the Eighth Amendment is  
4 transparent and accurate.

5 The court has approved two addenda to the Program Guide that create exceptions to  
6 specific transfer timelines set out in the Program Guide: one for transfers to mental health crisis  
7 beds (MHCBs) and one for transfers to psychiatric inpatient programs (PIPs). *See* September 27,  
8 2019 Order, ECF No. 6295 (approving addendum to MHCB transfer timeline, ECF No. 6261-1);  
9 *see also* December 15, 2017 Order, ECF No. 5750 (approving addendum to PIP transfer timeline,  
10 ECF No. 5744 at Exhibit 1). These documents each specify suspension of the relevant transfer  
11 timeline. *See* ECF No. 6261-1 at 2; ECF No. 5750 at 5. Each also applies to the entire universe  
12 of patients covered by the addendum. *See* ECF No. 6261-1 at 2 (addendum applies to all patients  
13 whose level of care is changed to MHCB); ECF No. 5744 at 5 (addendum applies to all patients  
14 accepted to PIPs).

15 The January 15, 2015 memorandum announcing the creation of STRH and LTRH units,  
16 included in the court-approved 2021 Program Guide update, ECF No. 7333-1 at 450-454, requires  
17 transfers to STRH/LTRH units within thirty days of an ICC decision to place a CCCMS inmate-  
18 patient in an administrative segregation unit (ASU) or a segregated housing unit (SHU) or within  
19 thirty days of issuance of a mental health chrono placing an ASU or SHU inmate in the CCCMS  
20 level of care. *Id.* at 451, 453. There are no exceptions to or suspensions of the 30-day time  
21 frames set out in that memo. *See id.* In contrast to the court-approved exceptions identified  
22 above, the March 3, 2016 policy applies only to male inmates set for transfer to STRH units; it  
23 does not apply to female inmates, and it does not apply to any inmates set for transfer to LTRH  
24 units. *See* ECF No. 7907 at 8 (quoting ECF No. 7333-1 at 456). The Special Master’s  
25 comparison of the language of the March 3, 2016 memorandum with the language of court-  
26 approved exceptions to transfer timelines is accurate and defendants’ objections do not  
27 demonstrate otherwise.

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1 Finally, defendants assert that court-approved exceptions to the MHCB and PIP transfer  
2 timelines are not comparable to transfer to STRH/LTRH units because the latter category of  
3 inmates “are not patients in need of inpatient care; they are patients at the lowest level of care  
4 being considered for transfer to another restricted housing setting.” ECF No. 7939 at 5. The  
5 STRH and LTRH units were created to avoid the risk of serious additional harm to class members  
6 through placement in administrative segregation units; as the court found in its April 2014 order,  
7 “placement of seriously mentally ill inmates in California’s segregated housing units can and does  
8 cause serious psychological harm, including decompensation, exacerbation of mental illness,  
9 inducement of psychosis, and increased risk of suicide.” April 10, 2014 Order, ECF No. 5131 at  
10 45-46. Defendants’ attempt to minimize what is at stake for these inmates betrays a fundamental  
11 misunderstanding of the importance of timely STRH/LTRH transfers and cannot be  
12 countenanced.

13 In sum, the Special Master has properly analyzed the issue of whether, in order to ensure  
14 transparent and accurate reporting, the March 3, 2016 memorandum should be incorporated into  
15 the business rules of the STRH/LTRH transfer timeline indicator as an exemption to that timeline  
16 or, instead, as an explanation for delays in the drill-down portion of this indicator. He has  
17 correctly concluded it is the latter and defendants have not demonstrated his conclusion is  
18 erroneous.

19 Plaintiffs’ presentation of the September 16, 2016 memorandum does not run afoul of the  
20 requirements of the Order of Reference, ECF No. 640. The Order of Reference requires parties to  
21 raise objections with the Special Master; there is nothing in the order that limits presentation of  
22 evidence in support of a recommendation. *See id.* at 8. Nor does the court’s reminder to the  
23 parties to “timely present the Special Master with all relevant information and their respective  
24 positions during the dispute resolution process,” May 24, 2023 Order, ECF No. 7847 at 10,  
25 necessarily foreclose presentation of additional relevant evidence in support of a recommendation  
26 to the court where, as here, notice is provided to the opposing party who has responded to that  
27 new information.

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1           On the merits, the September 16, 2016 memorandum stands for the general proposition  
2 that an inmate is not to be retained in administrative segregation solely on the basis of a medical  
3 hold if no other criteria for placement in administrative segregation remain applicable. The  
4 STRH and LTRH units are specialized administration segregation units created for class members  
5 to mitigate the risks of serious harm identified in the court’s April 10, 2014 order for those who  
6 otherwise meet Title 15 requirements for administrative segregation placement. Defendants’  
7 cramped reasoning that the September 16, 2016 memorandum has no application here because  
8 STRH and LTRH units are equivalent to other administrative segregation units disregards the  
9 harm these units are intended to mitigate. The spirit, if not the letter, of the September 16, 2016  
10 memorandum supports the conclusion that a medical hold, without more, is insufficient to retain  
11 class members designated for STRH or LTRH transfers in other administrative segregation units  
12 past established timelines.

13           To the extent defendants’ objection telegraphs a concern about ultimate questions of  
14 compliance, compliance requirements are not before the court at this time. What is before the  
15 court is how the data on STRH/LTRH transfer timelines can be gathered and reported most  
16 accurately and transparently. The Special Master’s recommendation is grounded in the language  
17 of the Program Guide as well as in an accurate distinction between court-approved exceptions to  
18 specific timelines versus departmental policy language acknowledging possible reasons for delay.  
19 Adoption of the Special Master’s recommendation will result in accurate reporting of whether  
20 class members placed in administrative segregation units are transferred to an STRH or an LTRH  
21 within thirty days and, if they are not, the duration of and explanation for the delay. This accurate  
22 and detailed reporting, in turn, will provide a solid foundation for ultimate questions of  
23 compliance when those are before the court.

## 24 **V. CONCLUSION**

25           For the foregoing reasons, the court will adopt in full the Special Master’s August 8, 2023  
26 Response and the modified recommendations. Defendants’ objections are overruled. Any  
27 contentions that bear on the question of compliance may be raised, as necessary, at a later stage of  
28 these proceedings when compliance issues are before the court.

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

2 1. The Special Master's August 8, 2023 Response is adopted in full.

3 2. Defendants' September 7, 2023 objections are overruled without prejudice in  
4 accordance with this order.

5 3. Defendants' September 27, 2023 request for leave to reply to plaintiffs' response, ECF  
6 No. 7974, is GRANTED to the extent explained above and the arguments contained therein are  
7 accepted as defendants' reply.

8 4. The medical hold exception to the existing STRH/LTRH transfer timeline indicator's  
9 documentation shall be removed and all transfers to STRH and LTRH units that exceed 30 days  
10 shall be scored as not satisfying the 30-day transfer business requirement. Concurrently, the  
11 indicator shall include drill-down information including any explanation for delayed transfers,  
12 including medical holds.

13 SO ORDERED.

14 DATED: October 10, 2023.

  
CHIEF UNITED STATES DISTRICT JUDGE