

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

RALPH COLEMAN, et al.
Plaintiffs,

vs.

No. 2:90-cv-0520 KJM DB (PC)

GAVIN NEWSOM, et al.,
Defendants.

**SPECIAL MASTER'S REPORT AND RECOMMENDATIONS ON THE DISPUTED
POLICIES AND COURT ORDERS IN RESPONSE TO THE COURT'S JULY 9, 2019
ORDER**

INTRODUCTION

On July 9, 2019, the court issued an order directing the parties to file within 30 days “a document that identifies all negotiated or court-ordered remedial measures adopted in this action that cover custodial issues and are not included in the 2018 Program Guide Revision.” ECF No. 6214 at 16, 19. The parties were to confirm that the Special Master had reviewed the list and concurred as to its comprehensiveness. *Id.* On August 2, 2019, the parties filed a stipulated request and proposed order to extend the filing deadline to September 4, 2019 (ECF No. 6234), which was approved by the court on August 12, 2019. ECF No. 6240. On September 4, 2019, the parties filed a second stipulated request and proposed order to extend the filing deadline by an additional two days, to September 6, 2019. ECF No. 6265.

On September 6, 2019, the parties filed the “Parties’ Joint Submission of Custody-Related Policies and Orders Required by July 9, 2019 Order [ECF No. 6214].” ECF No 6271. Attached as Appendix A were 70 regulations, policies, and court orders the parties agreed were

responsive to the court's July 9, 2019 order. *Id.* There were four additional policies and/or court orders that plaintiffs wanted added to the list of negotiated or court-ordered custodial remedial measures, which defendants contended were not responsive to the court's order. ECF No. 6271 at 2.

On October 8, 2019, the court issued an order approving the parties' September 4, 2019 request for a two-day filing extension and considering the September 6, 2019 submission timely filed. ECF No. 6315 at 1. The court approved and adopted Appendix A to the parties' joint submission and referred the remainder of the matter to the Special Master to "determine whether to convene an additional meeting of the parties to resolve the disputes and/or to file his specific recommendations with the court." *Id.* at 2. The Special Master was granted 60 days, or, on or before December 9, 2019, to comply with the court's order. *Id.* at 3. On December 9, 2019, the Special Master filed a request for an enlargement of time to December 19, 2019 to file his report and recommendations. ECF No. 6409. The court has not yet acted on the Special Master's request.

The Special Master submits the current report and recommendation pursuant to the court's July 9, 2019 order as outlined above.

I. THE REMAINING COURT ORDERS AND POLICIES IN DISPUTE, MEET AND CONFER PROCESS, AND RESULTING STIPULATION.

As previously stated, there were four policies and/or court orders around which there remained disagreement amongst the parties. Those policies and orders include:

1. March 8, 2017 Order (ECF No. 5573) and the Department of State Hospital's (DSH) Hospital Access System (HAS) Policies;
2. June 18, 2009 Order (ECF No. 3613) to Fill the Full Complement of 256 Beds at Atascadero State Hospital (ASH);

3. July 5, 2016 Memo – Utilization of Administrative Determinants Based Upon Positive and Negative Behavior and Increased Access to Rehabilitation Programs, and Associated Regulations, 15 C.C.R. §§ 3375, 3375.2; and
4. August 8, 2016 Memo – C&PR Approval for Movement to a Higher or Lower Level Facility Within the Same Institution. (ECF No. 6271 at 2.)

Since October 8, 2019, the Special Master has engaged in a series of discussions with the parties, both separately and jointly, regarding the four items in dispute. Early discussions with defendants proved fruitful, resulting in an agreement to include the July 5, 2016 and August 8, 2016 memos on the list of custody-related negotiated or court-ordered remedial measures that are not included in the 2018 Program Guide Revision.

Hopeful that agreements could be reached on the remaining two items, the Special Master requested an enlargement of time to continue his discussions with the parties. The continued discussions proved successful. The parties were able to reach an agreement to exclude the March 7, 2017 order and HAS policies, and the June 18, 2009 order from the list. The parties further agreed on notification processes for any proposed modifications to the HAS regulations and/or policies and have drafted a stipulation to memorialize their agreements. The parties' stipulated agreement, entitled, "Parties' Supplemental Joint Submission of Custody-Related Policies and Orders Required by July 9, 2019 Order [ECF No. 6214]" has been reviewed and approved by the Special Master.

RECOMMENDATION

In view of the foregoing, the Special Master recommends that the Court approve and adopt the “Parties’ Supplemental Joint Submission of Custody-Related Policies and Orders Required by July 9, 2019 Order [ECF No. 6214],” filed December 19, 2019. ECF No. 6431.

Respectfully Submitted,

/s/

Matthew A. Lopes, Jr., Esq.
Special Master

December 19, 2019