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 11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13
 14 **RALPH COLEMAN, et al.,**

15 Plaintiffs,

16 v.

17 **ARNOLD SCHWARZENEGGER, et al.,**

18 Defendants.

Case No. 2:90-cv-00520 LKK JFM P

**DEFENDANTS' RESPONSE TO
 COURT ORDER OF MAY 23, 2007 RE:
 PAY PARITY PLAN**

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 20 On May 23, 2007, this Court ordered Defendants to submit a plan addressing pay
 21 parity to certain clinicians providing care to members of the *Coleman* class at any state run
 22 facility. The Court further ordered Defendants to submit a report on two related matters: (1) the
 23 feasibility of other options for forthwith remedying the limitation on the admission of *Coleman*
 24 class members to Atascadero State Hospital and (2) the identification of the job titles and
 25 number of staff required, per applicable staffing ratios, to provide care to *Coleman* patients at
 26 Atascadero

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1 State Hospital, Coalinga State Hospital, Patton State Hospital, Napa State Hospital, and
2 Metropolitan State Hospital. Defendants' response to this court order is attached as Exhibit 1.

3 Dated: June 13, 2007

Respectfully submitted,

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/s/ Lisa A. Tillman

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RALPH COLEMAN, et al., v. ARNOLD SCHWARZENEGGER, et al.,

CASE NO. CIV S-90-0520 LKK JFM P

**DEFENDANTS' RESPONSE TO COURT ORDER OF MAY 23, 2007
RE: PAY PARITY PLAN**

EXHIBIT 1



CALIFORNIA DEPARTMENT OF
Mental Health

1600 9th Street, Sacramento, CA 95814
(916) 654-2413

June 13, 2007

Michael Keating
Special Master

via:

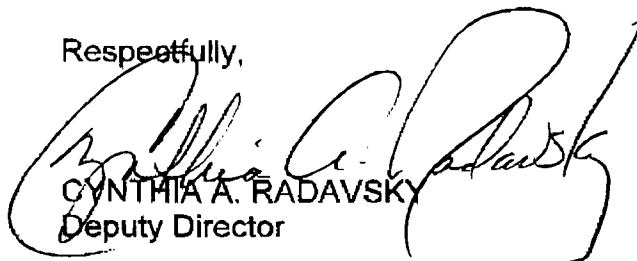
Lisa Tillman
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RE: Request for Information: Court Order May 23, 2007

Please find enclosed Defendants' response to the court order to provide the court a plan to provide pay parity for all licensed DMH psychiatrists, psychologists, licensed clinical social workers and psychiatric technicians providing care of the Coleman class; the report on the feasibility of other options remedying the limitations on admission of Coleman class members to Atascadero State Hospital; and the report identifying the job titles and number of staff required to provide care for all Coleman class members psychiatric programs at the DMH hospitals and

If you need clarification on any aspect of this report, please contact Dr. Char Schultz, Long Term Care Services Division at (916) 654-2413.

Respectfully,



CYNTHIA A. RADAUSKY
Deputy Director

Enclosures



1600 9th Street, Sacramento, CA 95814
(916) 654-2413

June 13, 2007

Department of Mental Health
Pay parity

This document responds to Judge Karlton's May 23, 2007 order on pay parity.

Background:

DMH submitted on May 16, 2007, a Recruitment and Hiring plan as a response to Judge Karlton's April 25, 2007 order to provide a plan addressing the staffing vacancies that affect *Coleman* class members receiving care at DMH institutions, including an evaluation of what realistically can and cannot be accomplished. On May 23, 2007, Judge Karlton issued an additional order regarding pay parity for DMH clinicians that treat *Coleman* class members. The Order directed Defendants to respond to the four issues set forth below

1. *Within three weeks from the date of this order, defendants shall file with the court a plan to provide pay parity with the pay scales approved by the court in its December 15, 2006 order for all DMH psychiatrists, psychologists, licensed clinical social workers, and psychiatric technicians providing care to members of the Coleman class at any state run facility whether such facility is a DMH hospital or a CDCR prison institution. (May 23, 2007 Order, p. 5.)*

Response:

DMH will offer pay parity with the pay scales approved by the court in its December 15, 2006 order minus 5% for **ALL** DMH staff in *Coleman* classes at DMH Institutions.¹ DMH is aware that the Court ordered full parity for these clinicians, but the Court did so under the impression that this would be only a portion of the staff in *Coleman* classes at DMH facilities. As explained below, isolating clinicians that treat only CDCR inmates at DMH facilities is not possible. Accordingly, in recognition of the larger number of employees DMH will include in the pay raise and the difference in working environments between CDCR and DMH facilities, DMH proposes to offer parity minus 5% for all DMH staff in *Coleman* classes. DMH has proposed implementing this level of pay for psychiatrists and has seen a reduction in the exodus of staff in that classification since notifying them of the

¹ DMH clinicians working in co-located facilities (Salinas Valley State Prison and California Medical Facility-Vacaville) will continue to receive full pay parity.

potential increase. In addition, some psychiatrists have returned to the state hospitals from CDCR. We anticipate similar successes in other classes as a result of this pay parity. Implementing the pay increase is subject to Department of Personnel Administration (DPA) negotiations with the various bargaining units and the issuance of a DPA pay letter. DMH agrees to report to this Court the progress the implementation of these new salaries will bring on the recruitment and retention at DMH.

According to the DPA, it will take approximately 30 to 60 days to fully implement this approach. In order to process these adjustments, DPA needs to ascertain the following information:

- a list of identified classes that will receive the pay increase;
- the location where these classes are utilized; and
- the number of staff affected.

After DPA receives this information, they will draft the pay letter for submission to the State Controller's Office. In addition, DPA will notice, then meet and confer with the unions consistent with any change that affects the terms and conditions of employment. Finally, DPA will recommend that there be a waiver of any applicable state statutes consistent with what has been done in the past. The last step is for approval by the Legislature.

It is important to note the impact the court's full parity requirement will have on the state employer-employee organization negotiations for a new Memorandum of Understanding (MOU) for particular bargaining units. The imposition of an order that includes higher salary levels that ignores and supersedes a salary package already agreed to by the state and employee organization negotiators distorts the negotiation process. By not giving deference to the state contract negotiation process to establish a salary package for bargaining unit employees, the court is impeding the effectiveness of the labor negotiations.

2. *Defendants shall consider and report to the court on the feasibility of other options for forthwith remedying the limitation on admission of Coleman class members to Atascadero State Hospital caused by the staffing shortage, including but not limited to contracting with outside psychiatrists and other necessary psychiatric staff to provide sufficient staffing for the Coleman beds at Atascadero State Hospital. (May 23, 2007 Order, p. 5.)*

Response:

DMH will continue to utilize the components of the **DMH Recruitment and Hiring Plan** submitted to the *Coleman* court on May 16, 2007. In addition to the salary increases in the 2007-2008 Governor's proposed budget, the plan includes the following:

A. Recruitment Firm: The Department of Personnel Administration submitted a Spring Finance Letter requesting \$1 million per year in funding for two years for a contract with a recruitment firm to develop and implement performance-based recruitment efforts focused on the areas of most pressing need for health care clinicians. This proposal is on behalf of

all Departments utilizing the clinical staff classifications, including the DMH, Department of Developmental Services, the CDCR, and California Department of Veterans Affairs. This contract will create a consistent recruitment pool so that all departments gain access to a larger number of health care professionals and increasing hiring across the State. The Legislature modified the proposal to authorize the expenditure of \$350,000 to support recruitment activities, and included provisional language that will allow the funding to be augmented by \$1.5 million in order to further increase health care personnel recruitment efforts.

B. Budgeted Staffing Plan to Fill Vacancies: The DMH developed a Staffing Plan, (previously submitted as Appendix B), as part of the 2007-08 State Hospital May Revision Estimate which outlines a hiring plan to fill the vacant positions for budget year 2007-08. DMH currently has 1,860 vacant staff positions. This plan anticipates reducing the vacancies by 750 positions, hiring 300 staff for the five state hospitals during the first six months of 2007-08 and another 450 staff for the last half of 2007-08. More specifically, for the first half of 2007-08, DMH will hire ten (10) additional staff each month for each of the five hospitals resulting in an overall net gain of fifty (50) staff per month.

The combined effect of salary adjustments and the use of a contracted-for recruiting agency will allow DMH to structure the recruitment and hiring process to create a larger hiring pool. DMH believes this strategy will enable the hiring of fifteen (15) new staff per hospital for the last six months of 2007-08 with a net gain of 75 staff per month.

C. State Personnel Board Resolution: DMH will seek a resolution from the State Personnel Board to compress the hiring ranks from six ranks to three ranks in an effort to accelerate the hiring process. The current six rank policy has hampered DMH's ability to hire individuals who are placed below the third rank in recruitment ranking because it limits the pool of applicants that may be qualified for a specific position. The proposed resolution will state that the Board will initiate continuous open testing based on the three limited scores and will serve as the "focal point for meeting the automated examination needs" of the designated classifications. This resolution should afford DMH the ability to more readily access qualified candidates for positions.

D. Loan Repayment: In March 2007, three DMH hospitals, Atascadero, Metropolitan, and Napa, applied for the loan repayment program to the National Health Service Corps (NHSC) for psychiatry, psychology and social work.² This federal organization provides programs for multi-year recruitment and retention assistance. A key component in NHSC's evaluation process involves the ratio of budgeted staff to the current number of employed staff, and each of the three hospitals submitted that data with their application. It is unknown at this time if the applications have been accepted. If accepted, the loan repayment option would increase the ability of the hospitals to recruit by offering applicants the loan repayment plan for the period of time that they work for these facilities. This

² Because Coalinga State Hospital's application for this program was previously rejected, it chose not to reapply at this time. Patton State Hospital chose not to participate at this time as their vacancies did not warrant application.

opportunity is very important to new graduates who have acquired many student loans to pay for their education.

E. Use of Registries: DMH has aggressively pursued using outside registry companies and contractors to fill its staffing shortage. The use of these resources has allowed DMH to continue operations when staffing levels have threatened the ability of a state hospital to remain open. The use of registry contracts continues at the hospitals, with some assigning registry employees to specific programs to enhance the registry employee's knowledge of the program and to provide continuity of care. Registry employees are usually individuals who need more flexible working schedules and are unable to work mandatory overtime. The use of registry personnel has been one way that the hospitals and psychiatric programs have been able to fill vacant staffing positions on the individual units on any given day.

F. Use of Emergency Contracts: The Headquarters-level master emergency contract was developed to supplement other methods of staffing in the hospitals and enable continued operations in compliance with state licensing and JCAHO requirements. The master emergency contract provides for both *Plata* and *Coleman* classifications at the five state hospitals. The contract is pending approval but other clinically specific emergency contracts are in place, such as psychiatrist contracts and pharmacy contracts. As emergency contracts may only be used for one year, DMH is taking the first steps toward putting a permanent master contract in place before the emergency contracts expire.

G. Internship programs: Internship programs, in partnership with local community college and university programs, have proven a valuable means to recruit staff. The internship programs provide graduate students with the opportunity to continue their clinical education and training as psychiatry fellows and interns in psychology, social work and rehabilitation therapy. Some of these clinicians decide to join DMH once they have completed their graduate work, providing the DMH with a source of employees. The availability of the loan repayment program to DMH applicant-employees is based on the programs funding. Internship programs require the approval and participation of affiliated University programs based on two key components: (1) the availability of senior, experienced clinical staff to supervise the interns and (2) an established clinical rotation created by permanent DMH staff..

H. Review of Utilization of Psychologists: DMH will review its ability to utilize psychologists in lieu of psychiatrists for certain patient care responsibilities, consistent with the staffing ratios of the CRIPA consent judgment.

3. *Defendants shall file a report identifying the job titles and number of staff members required, pursuant to applicable staffing ratios, to provide care to the following persons:*
 1. *Coleman patients housed in 25 mental health crisis beds at Atascadero State Hospital;*

2. Coleman patients housed in 231 intermediate care facility beds at Atascadero State Hospital;
 3. Coleman patients housed in 50 intermediate care facility beds at Coalinga State Hospital;
 4. Coleman patients housed in 30 acute and/or intermediate care facility beds at Patton State Hospital;
 5. Coleman patients housed in 5 intermediate care facility beds at Napa State Hospital;
 6. Coleman patients housed in 5 intermediate care facility beds at Metropolitan State Hospital;
 7. Admission units at each state hospital that will accept Coleman patients, if any.
- (May 23, 2007 Order, p. 6.)

Response:

DMH state hospitals utilize a comprehensive staffing system which requires the formulation of staffing needs based upon overall population, not based upon the census of specific patients nor upon the census of specific units. The average size of a hospital treatment program is 200-250 beds or 4 or 5 units. Most hospital treatment units are dorm housing with an average of 50 beds. There are a few smaller units, with perhaps one or two units with all single rooms.

Staff is able to move on or off a unit as needed either by their request or by management necessity for coverage. When there are unit vacancies or coverage or licensed disparities, overtime, contract or registry staff can be utilized or staff can be re-assigned as needed. In addition to the staff assigned to the units, there are staff assigned to off unit Mall treatment and specialty treatment teams such as Behavior Consultation Committees (BCC), Positive Behavior Support (PBS), By-Choice teams, Dysphagia screening and other specialty clinics that are considered part of the interdisciplinary team based on the patients individualized treatment needs. All patients participate in Mall services and these services are provided throughout the hospital. The provision of these services in this environment is a critical element in providing appropriate treatment. It is not possible to isolate these services by unit or patient type.

Given this comprehensive staffing methodology as well as the movement of staff to meet the interdisciplinary therapeutic treatment needs of patients, DMH respectfully states that it cannot isolate a set compliment of staff that only provides services to specific patients, such as *Coleman* class members, in the hospitals listed in this court order.

DMH does note that the staffing ratios and the composition of the treatment teams required for the overall population of each hospital arise out of the consent judgment signed in June 2006 between the State of California and the United States Department of Justice.

Section C. 1. of the consent judgment states:

- h. "Consists of a stable core of members, including at least the individual served, the treating psychiatrist; the treating psychologist; the treating rehabilitation therapist; the treating social worker; the registered nurse and psychiatric technician who know the individual best; one of the individual's teachers (for school-age individuals); and, as appropriate, the individual's family, guardian, advocates, attorneys, and the pharmacist and other staff;
- i. Not include any core treatment team members with a case load exceeding 1:15 in admission teams (new admissions 90 days or less) and, on average, 1:25 in all other teams at any point in time,
- j. Not include staff that is not verifiably competent in the development and implementation of interdisciplinary treatment plans."

Regular staff are assigned to units under union contract by either post and bid or management discretion. Staff is also assigned by mix (registered nurses and psychiatric technicians) and license (unlicensed staff and licensed staff) as DMH must have a registered nurse per shift per unit to comply with Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and licensed staff to provide certain services (i.e., level-of-care assessments, monthly progress notes and certain medical interventions and treatments) that only licensed staff are authorized under the law to provide.

For all of these reasons, DMH will be providing an increased salary to all DMH staff in Coleman classes. Providing the increased salary to all staff serving Coleman class members will help overall recruitment and retention at DMH.

- 5. *Within three weeks from the date of this order, Defendants shall file, concurrently with the plan required by this order, a first month report of referrals, pending referrals, rejections, and transfers, of inmates from any level of outpatient mental health care to any level of inpatient mental health care, and from any level of inpatient mental health care to a different level of mental health care. The report shall include a complete list of all class members currently waiting for transfer to any level of DMH hospital care. (May 23, 2007 Order, p. 6.)*³

Response:

In the August 23, 2006 Order on the Atascadero State Hospital/California Medical Facility Bed Plan, the DMH was ordered to provide information on the bed swap portion of the plan between the Acute Psychiatric Care Services at Atascadero State Hospital and the Vacaville Psychiatric Program at the California Medical Facility including: the number of patient referrals, the number of patient rejections, patient-inmate time frames, the number of patient acceptances, identities of patients-inmates, each patient's-inmate's length of stay and discharge date, the source of the referrals by institution and the reason for

³ Point number four was addressed to plaintiffs' counsel only. Accordingly, DMH is responding to paragraph 5 and is skipping paragraph 4.

rejection. In addition, the data from the Mental Health Crisis Beds at the Vacaville Psychiatric Program is provided.

DMH has updated this report required by the May 23, 2007 order to include: referrals, pending referrals, rejections, and transfers, of inmates from any level of outpatient mental health care to any level of inpatient mental health care, and from any level of inpatient mental health care to a different level of mental health care. The report includes a complete list of all class members currently waiting for transfer to any level of DMH hospital care. **(See Attachment A)**

ATTACHMENT A