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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

DISABILITY RIGHTS OREGON, METROPOLITAN PUBLIC DEFENDER SERVICES, INC., and A.J. MADISON, Plaintiffs, v. PATRICK ALLEN, in his official capacity as head of the Oregon Health Authority, and DOLORES MATTEUCCI, in her official capacity as Superintendent of the Oregon State Hospital, Defendants.	Case No. 3:02-cv-00339-MO MOTION FOR MODIFICATION TO INJUNCTION

MOTION

Pursuant to L.R. 7-1, counsel for Defendants certifies that they have conferred with counsel for Plaintiffs, and that Plaintiffs oppose this motion. This motion is supported by the Court's inherent authority to modify its own orders, the points and authorities below, and the

accompanying declarations of Derek Wehr (Wehr Decl.), Dr. Tyler Jones (Jones Decl.), and Carla Scott (Scott Decl.).

Due to the unforeseen, changed circumstances of the global Corona Virus Disease 2019 (COVID-19) pandemic, Oregon Health Authority (OHA) and Oregon State Hospital (OSH) hereby move for a modification of the injunction in this case (Docket No. 51). OSH is presently unable to safely comply with that injunction due to COVID-19. OSH and OHA, therefore, hereby move for a modification of that injunction as follows:

1. Effective March 16, 2020 through April 13, 2020, OSH may *nunc pro tunc* temporarily limit admissions to Guilty Except for Insanity (GEI) revocations and persons under ORS 161.370 orders who OSH determines meet established expedited admission criteria;
2. Effective April 13, 2020, OSH may *nunc pro tunc* continue temporarily limiting admittions but begin increasing admissions starting with persons under ORS 161.370 orders (.370 orders), in the order in which the court orders were signed. OSH may take protective steps to prevent potential spread of COVID-19 into the general patient population, including admitting small groups of patients onto specialized admissions units and quarantining new admissions as appropriate. This admissions process may continue as long as OSH determines it is safe for all patients. OSH will provide this Court and Plaintiffs with monthly status reports until compliance with the original injunction is achieved.
3. The terms of this modification shall terminate when it is medically safe for OSH to begin accepting patients in the normal course again, and OSH has returned to admitting patients in seven days or less.

I. INTRODUCTION

In 2002, District Judge Owen Panner issued a permanent injunction requiring OSH "to ensure that persons who are declared unable to proceed to trial pursuant to ORS 161.370(2) be

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committed to the custody of the superintendent of a state hospital . . . as soon as practicable. . . . These admissions must be done in a reasonably timely manner, and completed not later than seven days after the issuance of an order determining a criminal defendant to be unfit to proceed to trial because of mental incapacities under ORS 161.370(2)." *Oregon Advocacy Ctr. et al. v. Mink et al.*, 2002 WL 35578910, *7 (D. Or. 2002) (Docket No. 51 in this case).

The need for a suitably tailored modification to this injunction is clear and urgent. The President of the United States has declared a national public health emergency, and the Governor of the State of Oregon has declared a public health emergency throughout the state, in response to the spread of COVID-19 and in an effort to reduce the exposure to COVID-19 and slow the spread of the disease.

In the absence of the emergency actions taken by OSH and OHA to temporarily limit and then increase admissions pursuant to carefully planned, medically based protocols, the Hospital would have been at enormous risk to becoming a COVID-19 hotspot, with nonsymptomatic but infected new patients transmitting the virus to large numbers of patients in treatment as well as to staff going home to their families and into the community every night. These emergency policies have been designed to limit that serious and catastrophic risk. These policies, though necessary for patient and public health and safety, have temporarily prevented OSH from maintaining its longstanding compliance with the injunction in this case.

OSH and OHA, therefore, propose a narrow, temporary modification of the injunction to allow it to continue the emergency actions being taken described in more detail below, until such time that it is medically safe for OSH to begin accepting patients in the normal course. OSH also proposes to file monthly compliance status reports with this Court until it regains compliance with the injunction pursuant to its plan outlined below.

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II. BACKGROUND

A. Overview of OSH and the Populations it Serves

OSH is part of OHA and provides patient-centered psychiatric treatment for adults from throughout the state who need hospital-level care. Wehr Decl. ¶ 4. Hospital-level care includes: 24-hour care, on-site nursing, psychiatric and other credentialed professional staff, treatment planning, pharmacy, laboratory, food and nutritional services, and vocational and educational services. *Id.* Services provided by OSH include psychiatric evaluation, diagnosis, and treatment, as well as community outreach and peer support. *Id.*

Three populations are served within OSH: (1) Civilly committed patients, who are people who have been found by the court to be an imminent danger to themselves or others, or who are unable to provide for their own basic health and safety needs due to their mental illness; (2) those found Guilty Except for Insanity in a criminal case; and (3) aid-and-assist patients, people who have been arrested but are not able to participate in their defense because of a mental illness. *Id.* ¶ 5.

OSH has two campuses, one in Salem and one in Junction City. *Id.* ¶ 4. OSH serves more than 1,565 people per year and employs more than 2,000 staff. *Id.* The campuses are composed of units containing various numbers of beds. *Id.* Units are licensed as either secure residential treatment facility (SRTF) or hospital-level-of-care. *Id.* Within the hospital-level-of-care designation, units are designed to provide either progressive care, intensive care, or high-acuity psychiatric care. *Id.*

Aid-and-assist patients have been ordered to OSH under .370 orders for stabilization and educational services that enable them to understand the criminal charges against them and thus to "aid and assist" in their own defense. *Id.* ¶ 6. Restorative services provided under .370 orders are most often provided by OSH, but in many instances can be provided in the community. *Id.*

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B. Effect of the COVID-19 Pandemic on the Hospital

As the novel coronavirus COVID-19 took hold in the Pacific Northwest, OSH began assessing how best to protect the patients. *Id*. ¶ 7. By March 3, OSH had established a COVID-19 Incident Response Guide, aligned with OHA. *Id*. Ex. 1. On March 10, DHS and OHA released Guidance for Long-Term Care Facilities. *Id.* at Ex. 2. OSH activated its Emergency Operations Center (EOC) on March 11. *Id.* ¶ 8.

By March 13, OSH Chief Medical Officer (CMO) Dr. Tyler Jones had identified 251 patients at risk for serious illness if infected with COVID-19, due to comorbid medical conditions. *Id*. ¶ 9. Of the 251 patients identified considered at risk, Dr. Jones then identified 71 patients that were especially high-risk, because these patients had comorbid medical conditions and were also between the ages of 60 and 83. *Id.* This information made the importance of creating protective units clear. *Id*.

OHA published guidance for In-Patient Psychiatric Facilities the next day, March 14. *Id*. ¶ 10. OSH closely reviewed the guidance and created and distributed an emergency memo temporarily restricting admissions to the hospital, effective March 16, sending it to stakeholders and community partners March 14. *Id*.

OHA Director Patrick Allen signed an order to restrict OSH admissions effective March 16. *Id*. The order and corresponding notice to stakeholders restricted new admissions to only patients entering under GEI revocations and aid-and-assist patients who meet the previously established criteria for expedited admissions. *Id.* The week of March 15, OSH also suspended all non-essential in-person visitation for its patients (Skype visitation has since been put into place) and began medically screening all OSH employees entering both campuses. *Id.* ¶ 11.

During the week of March 15, OSH restructured the units to allow for isolation of potentially infected patients and protection of our high-risk patients. *Id.* ¶ 12. OSH designated three units (BY1, BY2, BY3) as protective units for patients who would be at high risk if they were infected with COVID-19. *Id.* ¶ 13. OSH also directed its facilities staff to modify the

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HVAC system in those units to increase air circulation and create "positive pressure," so that the air coming into the protective high-risk units would be fresh air from the outside. *Id.*

OSH also designated one unit in the Salem campus, and one in the Junction City campus, for patients under investigation (PUI) for COVID-19 and positive COVID-19 cases. *Id.* ¶ 14. The HVAC system in each of those PUI units was modified to create "negative pressure" to keep the air in that unit from traveling into other units. *Id.* (Three patients were identified as potential COVID-19 patients and were housed temporarily in this unit; all three were tested and were determined to be clear of the virus, and were then moved back to the general treatment units.) No patients have yet tested positive for COVID-19. *Id.*

Creation of the new high-risk protective units and the COVID-19 PUI isolation units required moving the patients previously in those units out to other units within the hospital, and moving different patients into those units. *Id.* ¶ 14.

OSH also, still during the week of March 15, trained staff on the use of personal protective equipment (PPE), as well as additional training and clinical expectations for treating patients during this pandemic. *Id.* ¶ 15. OSH adjusted treatment programs from one in which people from different units could mingle into a unit-based treatment model on individual treatment units, to limit patients' exposure. *Id.* OSH also limited patient and staff congregation areas, for the same reason, and closed the hair salon and Quest school on March 24, and the patient fitness center the next day. *Id.*

Two staff members on the Salem campus tested positive for COVID-19; both were sent home, and contact tracing was initiated to identify everyone who had come into contact with those staffers. *Id.* ¶ 16. OSH has mandated that all staff working in patient care areas on both campuses wear masks. *Id.* OSH has begun production of surgical masks and gowns to ensure adequate supply of PPE. *Id.* These restrictions were necessary to protect patients and limit the potential spread of COVID-19 within the two campuses and to allow the hospital to plan and designate special units for medically vulnerable patients and patients under investigation or

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COVID-19 positive. *See* Declaration of Dr. Tyler Jones. Again, to date, no patient at the Hospital has tested positive for COVID-19. *Id.* ¶ 14.

Because of OSH's temporary limits on admission due to the pandemic, as of April 16, 2020, there are 49 persons under .370 orders who could not be admitted to OSH within seven days of the order. *See* Wehr Decl., Ex. 6. OSH continues to monitor that list for, among other things, persons who have been released to or placed in the community. OHA and OSH also continue to work toward serving and assisting individuals in the aid-and-assist population in Oregon a variety of ways, as described in more detail below.

C. Ongoing Efforts to Return to Compliance

1. OSH's Plan to Increase Admissions for .370 Patients

To enable OSH to increase admissions, OSH designated a new Admissions Monitoring Unit (AN2) for new patients in the Salem Campus on March 27. Wehr Decl. ¶ 17. OSH was in a position to begin admitting patients this week, and started doing so on Monday, April 13. *Id.* A second, slightly larger unit has been designated now (AN1), which will begin admitting patients on April 20. *Id.* The plan is to admit three patients per day, up to a total of 15 patients in unit AN2 during the first week, and 19 patients in unit AN1 during the second week. *Id.* OSH prepared an internal guidance document outlining the anticipated cadence of new admissions. *See* Wehr Decl, Ex. 5.

OSH will continue to prioritize admissions of GEI revocations and persons under ORS 161.370 admissions who meet expedited admission criteria. Wehr Decl. ¶ 10. Additional admissions will continue to increase with persons under ORS 161.370 orders first, in the order in which the court orders were signed. To prevent potential spread of COVID-19 into the general patient population, OSH will admit small groups of patients onto a specialized unit over a 5-day period. The admission process will begin with medical screening, followed by a 14-day quarantine, and additional screening before patients transition to other units. OSH plans to continue this admissions process as long as it is safe for all patients. Wehr Decl. ¶ 18.

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If OSH is able to discharge its aid-and-assist patients back to jails as anticipated (i.e., once they are restored to competency to stand trial), and if all goes as planned with the admission of new patients, OSH expects to be able to admit 15 new patients every 21 days, beginning April 13, and 19 new patients every 21 days, beginning April 20, for a total of 136 patients by the end of June, as illustrated in the following chart:

Admission Weeks	**April** 13 to 17	**April** 20 to 24	**May** 4 to 8	**May** 11 to 15	**May** 25 to 29	**June** 1 to 5	**June** 15 to 19	**June** 22 to 26
Unit AN2	**15**		**15**		**15**		**15**	
Unit AN1		**19**		**19**		**19**		**19**
OSH estimated admissions between April 13 to June 26 = 136 people								

Wehr Decl. ¶ 18.

In the event that a patient is admitted with symptoms resembling COVID-19, or has run a high temperature in the three days before admission to OSH, OSH plans to admit them directly to the PUI isolation unit and test them for the virus. *Id.* ¶ 19. If a patient begins exhibiting symptoms while being monitored on one of the admissions monitoring units, the Hospital plans to transfer that patient to the PUI isolation unit and test them, and then carefully monitor all the other patients in that unit for signs of illness. *Id.*

OSH cannot state with absolute certainty as to when it will be able to return to admitting .370 patients within seven days. *Id.* ¶ 20. The timing in the chart above suggests that OSH should be in a position to do so by the end of June 2020. *Id.* But this will depend on the number of new patients added to the admission list during that time (as well as the number of new GEI revocations during that time), the number of patients who can be returned to county jails at the completion of their restoration to competency (thereby opening up beds for new admissions), and the steps needed to monitor new admissions if it appears that COVID may have taken hold in any new group of admitted patients. *Id.*

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The second of the three factors is potentially the most significant. *Id.* ¶ 21. OSH understands that there may be one or more counties in which the courts may bar the return of defendants who have been determined by OSH's forensic evaluators to be able to aid and assist in their own defense, pending hearings requested by counsel for those defendants. *Id.* Those hearings can take five or six weeks or even longer to schedule and occur. *Id.* This would require OSH to keep patients in hospital beds, after their restoration to competency, and without any services to give them, awaiting the setting of a hearing in the criminal case. *Id.* If this occurs, OSH cannot estimate how long it may take to return to a seven-day admission schedule, because of the unknown number of beds that will be occupied by people no longer needing or receiving treatment, which cannot be occupied by new patients. *Id.* ¶ 22.

2. Increasing Community Restoration

Before the current global pandemic, OHA had requested, but did not receive, $20 million from the legislature during the last session for funding related to: (a) increasing secure residential treatment capacity in the community and at OSH, (b) community restoration resources generally, and (c) adding OHA staff to provide technical assistance and coordination for community restoration among key partners, including courts, corrections, law enforcement, coordinated care organizations and others. Out of necessity, OHA must focus its immediate attention now on mitigating the impacts of this pandemic and ensuring that there are adequate medical resources to treat those who contract it in this state. But that focus does not change OHA's long-term goal of promoting capacity for restoration treatment in the community for the aid-and-assist population.

3. Decreasing Demand for OSH Aid-and-Assist Services

In addition, Senate Bill 24 provides courts with many options other than jail for the aid and assist population who do not require a hospital level of care, including but not limited to: community restoration; release on supervision; and dismissal of the charges. Defense attorneys, prosecutors, and state courts are working together to find creative solutions for defendants who

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are unable to aid and assist in their own defense to keep them out of county jails where possible. OSH has engaged in many discussions with these stakeholders on this front and will continue to do so.

4. Continuing to Serve the Aid-and-Assist Population

OSH and OHA have been taking and continue to take the following steps for aid-and-assist patients who will not be admitted to OSH under the current policy, such as providing a copy of the hospital's expedited admission policy to all jail commanders in the state. OSH has been using the expedited admission protocol since 2018 and has previously sent out the protocol to jail commanders. To ensure that everyone remains aware of the protocol within the context of the current crisis, OSH re-sent it on March 16, 2020, with an attached copy of the emergency order. *See* Wehr Decl., Exs. 3 and 4.

OSH also continues to evaluate patients for community restoration under ORS 161.370(9)(b), and to work with CMHPs to locate potential placements for those patients. OSH's Behavioral Health Team has also been working and continues to work with OHA's Health Systems Division's Adult Behavioral Health Team to clarify patient needs and match those to available community resources in conjunction with our community partners. *Id.* ¶ 24.

Indeed, as of April 16, 2020, community restoration placements are still accepting aid and assist admissions, with some limitations in cases where the defendant tests positive for COVID-19. *Id.* ¶ 25. Notably, Northwest Regional Re-entry Center (NWRRC) has reported a current capacity of 20 beds with 9 currently open (5 beds are now occupied, and 6 being held for patients accepted for transfer); efforts are being made to develop programming and protocols to allow admission for persons from different counties. *Id.* ¶ 25.

In sum, OSH has been and continues to work deliberately to protect patients currently admitted at OSH who are at high risk for serious health consequences from contracting COVID-19, developing capacity for patients that are patients under investigation for COVID-19 (PUI) or positive, and developing capacity for new admissions when appropriate.

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D. State Psychiatric Hospitals that Did Not Immediately Limit Admissions in Order to Put Medically Based Protocols in Place Have Experienced COVID-19 Outbreaks

State psychiatric hospitals that did not immediately limit admissions in order to put in place carefully planned protocols have experienced outbreaks of COVID-19 among patients and staff, with several deaths as a result. See Scott Decl., Exs. 2-5. For example, in March 2020, a patient and a worker at Washington state's largest psychiatric hospital "tested positive for coronavirus, and workers at the facility fear[ed] the number of cases [would] increase due to a lack of protective gear and new policies that force[d] them to crowd together as they try to get into the building." *Id*. Ex. 2. By April 14, at least 27 workers and 6 patients at that hospital tested positive for COVID-19, and one patient had died. *Id*. Ex. 3. A state-run psychiatric hospital in Massachusetts is also experiencing spread of COVID-19; while that hospital did increase some safety measures (without limiting admissions), it did so only after the first test came back positive. Staff there have complained that the hospital "responded too late." Scott Decl., Ex. 4. And, in New Jersey, COVID-19 and has spread throughout all four of its state psychiatric hospitals: "At least 147 staff members and 71 patients have tested positive for COVID-19" and five have died. Scott Decl., Ex. 5. These are just a few examples of COVID-19 outbreaks at state psychiatric hospitals. *See also* Scott Dec., Ex. 6 (providing list of other examples).

III. LEGAL STANDARD FOR MODFICATION OF THE INJUNCTION

There is ample authority for a modification given the very real and deadly risks the unforeseen, global COVID-19 pandemic poses to the Hospital, its patients, staff, and the community. In *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 383–86 (1992), the Supreme Court established the standard for when a court order may be modified on one party's request. The requesting party bears the burden of establishing that a significant change in circumstances (either in fact or law) warrants a revision. *Id*. A modification may be appropriate when a "decree proves to be *unworkable because of unforeseen obstacles*" or "when enforcement of the decree

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without modification would *be detrimental to the public interest*." *Id*. (emphasis added); *United States v. Asarco*, 430 F.3d 972, 979 (9th Cir.2005 (citations and quotations omitted); *Sharp v. Weston*, 233 F.3d 1166, 1170 (9th Cir. 2000). Where the moving party meets its burden, the Court should consider whether the proposed modification is suitably tailored to the changed circumstances. *Rufo,* 502 U.S. at 386.

Acting in equity, this Court is vested with broad discretionary power, and must "take all the circumstances into account in determining whether to modify or vacate a prior injunction or consent decree." *Bellevue Manor Assoc. v. United States*, 165 F.3d 1249, 1256 (9th Cir.1999); *see also Hook v. State of Ariz*., 120 F.3d 921, 925 (9th Cir. 1997) (holding that district court abused its discretion in ruling that state department of corrections did not meet its burden of demonstrating changed factual circumstances to warrant modification where evidence showed unforeseen, increased security concerns for the institution, its employees, and the prisoners).

In addition, principles of federalism weigh in favor of allowing OHA and OSH flexibility in determining the best approach for managing the Hospital's response to the COVID-19 Pandemic. As Judge Beezer explained in her concurring opinion in *Hook*, federal courts should avoid micromanagement of state institutions where possible:

> I write separately to emphasize that the role of the federal courts does not include the micromanagement of state institutions.
>
> The Arizona Department of Corrections has met its burden of establishing a change in circumstances, the significant expansion of the Arizona prison population, which warrants modification, and perhaps even elimination, of [some terms] of the consent decree. Although the district court retains responsibility for tailoring the modification to resolve the security problems created by this prison population explosion, *see Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 391 (1992), the district court would do well to heed the views of the state prison authorities as to what constitutes a suitably tailored modification.
>
> The Supreme Court has held that "the public interest and [c]onsiderations based on the allocation of powers within our federal system ... require that the district court defer to local government administrators, who have the primary responsibility for elucidating, assessing, and solving the problems of institutional reform, to resolve the intricacies of implementing a decree modification." *Id*. at 392 (internal quotations and citation omitted). Especially in the prison administration context, this admonishment should not be taken lightly: "[i]t is difficult to imagine an activity in which a State has a stronger interest, or one that

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> is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Lewis v. Casey*, 518 U.S. 343, (1996) (Thomas, J., concurring) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 491–492 (1973)). . . . The Arizona Department of Corrections officials have the experience, expertise and the primary authority to run the prisons; these officials are in the best position to determine how the [injunction] should be modified in order to alleviate security concerns.

Hook v. State of Ariz., 120 F.3d 921, 926–27 (9th Cir. 1997) (BEEZER, R., concurring).

IV. ARGUMENT

A. The Proposed Modification is Warranted Due to Unforeseen Changed Circumstances and Enforcement Without a Modification Would be Detrimental to the Public Interest

OHA and OSH notified this Court on March 16, 2020, that it had implemented an emergency policy temporarily limiting admissions and might need to seek a narrow modification of the injunction. Scott Decl., Ex. 1. Since then, as set forth above, OSH has worked hard to increase admissions beyond those temporary limits. The proposed modification represents all that OSH and OHA can safely do at this time.

B. OSH's Proposed Modification is Suitably Tailored to the Changed Circumstances

As explained above, OSH and OHA carefully prepared its admissions policy and protocol to safely admit .370 patients as soon as possible while protecting existing patients and staff in light of the risks posed by COVID-19. The proposed modification is suitably tailored to the changed circumstances.

To the extent that Plaintiffs may ask for (or the Court may *sua sponte* consider) a modification that overrides state law in some aspect in order to effect compliance, the Ninth Circuit's decision in *Stone v. City and County of San Francisco,* 968 F.2d 850 (1992) is instructive here. The *Stone* case involved a motion for contempt against city and county of San Francisco for violation of jail overcrowding injunction; the district court imposed contempt sanctions that, among other things, authorized the city and county to override state law and release prisoners early. *Id.* The Ninth Circuit held that while the district court had that power to effect compliance, it was not warranted because

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there were no findings that such an order would be the least intrusive means or that the defendant could not come into compliance on its own:

> The court's expansion of the Sheriff's early-release authority to override applicable state law, however, presents a different case. The state-law-override provisions raise strong federalism concerns because the district court's action effectively reallocated legislative power to the executive.
>
> . . .
>
> Furthermore, the district court did not make any findings that other alternatives were inadequate before it authorized the Sheriff to override applicable state laws. Such findings are essential for any grant of authority to be "least possible power to the end proposed."
>
> The most recent expansion of the early-release provisions at issue in this appeal possesses the same infirmities. The court expanded the Sheriff's powers when it held the City in contempt, but did not wait to see if the threat of sanctions would induce compliance. Moreover, the City states that it was investigating the availability of jail space in other counties. As with the previous order, the district court should have made findings that these alternatives were inadequate before authorizing any further override provisions. Absent such findings, the state-law-override provisions cannot be considered the option least intrusive on the operation of state government.
>
> While we hold that the district court went too far under these circumstances in allowing the Sheriff to override state laws and state court sentences, we do not rule out the possibility that such action may be necessary in the future. *See Plyler v. Evatt*, 924 F.2d 1321, 1329 (4th Cir.1991) (refusing to rule out possibility that court might order early release to meet consent decree). If the threat of contempt sanctions proves ineffective and if the district court finds that other alternatives are inadequate, the court could consider authorizing the Sheriff to override certain provisions of state law to assure compliance. [citations omitted] In any event, the district court should tailor the grant of such authority as narrowly as possible so as to minimize the intrusion upon the state's affairs. At a minimum, the court should give the Sheriff override authority only as a last resort and only as essential to achieve compliance with the consent decree.

Id. at 864-65. While OHA and OSH do not believe it is necessary at this time for this Court to override any state laws or state court actions, this Court would have such power as a last resort.

C. A Special Master or Monitor is Not Warranted

At the status conference on April 9, 2020, Plaintiffs suggested that this Court should appoint a monitor or special master to oversee the injunction and/or to help OHA and OSH to achieve compliance. There is no basis to do so here. Plaintiffs have not identified under what

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authority they would seek such an appointment, nor have they identified any particular lack of expertise within OHA or OSH or any failure to plan and take all appropriate and necessary efforts to address the COVID-19 pandemic within their existing structure to address the specific challenges OSH now faces in light of the unforeseen COVID-19 global pandemic. As explained above, OHA and OSH are doing everything in their power to return to compliance with the injunction while protecting patients and staff. Moreover, a special master or monitor would only add unnecessary distraction to OSH resources and expense to an already strained state budget.

V. CONCLUSION

For the reasons set forth above, OSH and OHA respectfully request a narrow modification of the injunction to allow OSH to continue to implement its admissions policies and protocols as described above and to require OSH to provide monthly status updates to the Court until compliance is achieved.

DATED April 17, 2020.

Respectfully submitted,

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