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United States District Court,
N.D. California.

Andrew LANCASTER, Jeffery Mills, Dexter Williams, William Dennis, Steve Livaditis, Jimmy Van Pelt, H. Lee Heishman III and Johnaton George, Plaintiffs,

v.

Matthew CATE, Acting Secretary, California Department of Corrections and Rehabilitation, and Robert K. Wong, Acting Warden, San Quentin State Prison, Defendants.

No. C 79-01630 WHA. | March 26, 2009.

Attorneys and Law Firms

Donald H. Specter, Steven Fama, Prison Law Office, San Quentin, CA, Rachel A. Farbiarz, Prison Law Office, San Francisco, CA, for Plaintiffs.

Damon Grant McClain, Sara Ugaz, Correctional Law Section, Office of the Attorney General, Julianne Mossler, Attorney at Law, San Francisco, CA, for Defendants.

ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATIONS AND ORDER TO SHOW CAUSE

WILLIAM ALSUP, District Judge.

*1 The Court is in receipt of Magistrate Judge Nandor Vadas' report and recommendations regarding mediation of the consent decree, filed March 3, 2009. After conducting a "final inspection" of East Block, the condemned housing unit at San Quentin State Prison, the report detailed the prison conditions still governed by the consent decree and gave the prison staff "high marks" for the turn around that they have accomplished. Because no objections were filed, and because the Court has read the report, reviewed the accompanying photos and approves of the findings therein, this order **ADOPTS** the report's findings. The report recommended vacating the consent decree. *See* 18 U.S.C. 3626(b). The parties are requested to respond by **APRIL 6, 2009, AT NOON**, and show cause why the consent decree should not be vacated and

the case closed.

ANDREW LANCASTER, et al., Plaintiffs,

vs.

MATTHEW CATE, et al., Defendants.

FREDDIE FUIAVA, Intervener.

FINAL REPORT AND RECOMMENDATION RE COMPLIANCE WITH COURT'S ORDER REGARDING SANITATION AT DEATH ROW, SAN QUENTIN, CA.%

NANDOR J. VADAS, United States Magistrate Judge.

On February 28, 2008 the District Court ordered that the undersigned Magistrate Judge assist in the supervision of a consent decree entered into by the parties in 1979. The issues remaining for mediation were identified by the District Court in an Order dated February 15, 2008 (Docket No. 1493). The problems identified in that Order related to the sanitary conditions at the condemned housing unit in San Quentin State Prison. They included poorly maintained shower units, birds nesting inside the building, rodents, vermin, excessive noise, the lack of inmate accessible cleaning supplies, and a general lack of maintenance of the building itself.

Thereafter, the parties met with me in San Jose, California on March 6, 2008 to outline a course of action to alleviate the conditions that the District Court found to be substandard in its February 15, 2008 Order. On March 25, 2008 the parties entered into a Stipulation and Order regarding how the work was to be accomplished so that the facility would be in compliance with the District Court's February 15, 2008 Order (See Docket entry 1511).

In 2008 I conducted two prior on site inspections of "E" Block (the condemned housing unit) at San Quentin State Prison where death row inmates are housed. The first inspection was conducted on April 11, 2008, and included representatives from all parties involved in the consent decree. During this initial inspection I observed the progress being made on the tiers, including efforts to reduce the amount of water splashing over the showers and onto the tiers, the removal of accumulated grime on the tiers, bird and vermin control, and an overall upgrade

in the general cleanliness of the facility that included, painting, rust removal, and the issuing of cleaning supplies to the condemned inmates on a weekly basis.

This initial inspection revealed that, though substantial progress had been made towards eliminating the problems raised in the Court's February 15, 2008 Order, more work was needed to be done to comply with those requirements. It was decided at the conclusion of this initial inspection, that the parties would prepare a second stipulation (Docket No. 1554) and set a date for a second inspection for July 11, 2008.

*2 On July 11, 2008 I again visited the East Block housing unit at San Quentin State Prison to evaluate compliance with the parties' March 25, 2008 stipulation (Docket No. 1511). I found that an amazing amount of progress had been made by prison staff in a three-month period. I conducted a full inspection of the building and found that staff and inmate workers were maintaining an excellent level of cleanliness in the unit. Cell cleaning buckets and their contents were available to class members every day on request. Problems with the presence of birds, rodents or vermin had been eliminated to the extent that is possible in a facility such as the "East Block". Noise levels had been significantly reduced, the tier rails, walkways, and cell front security screens had been thoroughly cleaned, and painting was nearly completed. Additional painting of the gun rails and walls was in progress and was to be completed in the near future. The "pony wall" system continued to be effective at preventing water from getting on the tiers, and San Quentin officials had also replaced all broken and/or corroded tier bars and gutters adjacent to the showers. At the time of this inspection San Quentin officials reaffirmed that all "East Block" tier showers would be remodeled, using the "Carson section template", by January 1, 2009. However, on August 13, 2008 Deputy Attorney General Julianne Mossler informed me that due to state budgetary issues the installation of the new shower units would not be completed until March of 2009 at the earliest.

A "final inspection" of the condemned housing unit at San Quentin State Prison was conducted by me on January 23, 2009. This inspection was conducted with class counsel and representatives of the Attorney General's Office and CDCR.

During this inspection, a series of photographs were taken of "E" Block and have been filed under separate cover. These photographs depict in detail the striking improvements made to the condemned housing unit at San Quentin State Prison. The January 23, 2009

inspection began at the bottom of the "yard side" of the building continued up all five tiers, and then proceeded down all five tiers of the "bay side" of the building. In all, I inspected the entire facility and found it to be clean, newly painted, vermin and bird free.

SHOWERS:

I noted that several of the shower facilities were in the process of being retrofitted, (see Exhibit "A" and Photographs 51 through 68), and that an ADA shower was also in use (see Photograph 27). The remaining showers appeared to be clean and in good repair, except those being retrofitted. Water leakage from the shower area appeared to be minimal, and all residue and soap scum had been removed from the tiers. (see Photographs 5, 7, 8, 23, and 25 through 33). Cleaning buckets, towels, and towel bags appeared to be plentiful and were being used by staff and inmates to keep the shower areas clean. During the period of time it will take for prison officials to retrofit the existing showers, temporary showers have been installed and are being used (see Photographs 30 through 33).

VERMIN AND BIRDS::

*3 While conducting the January 23, 2009 inspection I did not observe any vermin or birds inside "E" Block. I also noted that it appeared all bird and vermin feces had been removed from the inside of the facility. Emergency equipment was appropriately covered. In addition, I noted several vector control traps inside the building. The "East Block" bi-weekly sanitation reports demonstrate that the staff at San Quentin State Prison are taking this issue seriously and doing everything they can to insure that the building stays as bird and vermin free as possible. During this final inspection, class counsel Steven Fama informed me that some of the class members are still complaining about mice on the tiers. Vermin control is a complicated process to execute in any large facility that has access to the outside as does "East Block". As an example, the 15th floor of the John Burton Federal Building has a mouse problem in the Magistrate Judges Chambers. Currently there are mouse traps placed in various locations there, and an aggressive program of elimination is in progress. The same can be said of "East Block". It is doubtful that prison staff can completely eliminate all birds and vermin from the condemned housing unit. What can be said is that prison officials are engaged in an aggressive program to contain and minimize this problem. (See Exhibit "B" and Photographs 9, 16 through 18, 34 and 69).

EXCESSIVE NOISE.

Prison officials informed me on January 23, 2009 that all non-condemned inmates had been removed from “East Block”. This has significantly reduced the noise problem on the tiers. It should be noted however, that a few condemned inmates still complained to me about excessive noise. The prison staff have an aggressive program in place to combat inmate generated excessive noise (See Exhibit “C”). While touring the facility, the noise level appeared to be appropriate for the number of inmates being housed in “East Block”. There is in place a procedure for inmates to complain about the noise problem to staff, and the disciplinary reports contained in Exhibit “C” demonstrate that prison staff have engaged in appropriate actions to contain excessive noise on the tiers.

GENERAL CLEANLINESS OF “EAST BLOCK”.

The interior photographs taken of “East Block” clearly show the measures taken by prison officials at San Quentin to improve the overall condition of “East Block”. The interior walls of the cells have been newly painted. guard rails, screens, and stairways have been cleaned, repaired and repainted. Cell cleaning buckets have been made available to the inmates (See Photographs 6, 44 through 47) and are regularly checked to make sure they have all of the needed supplies.

During this final inspection, several of the inmates stated to me that the prison administration had made an outstanding effort to improve their conditions in the condemned housing unit. None of the inmates with whom I or Mr. Fama spoke registered any complaints about the cleanliness of the areas to which they have access. One or two did voice complaints about vermin and excessive noise, but given the age and nature of the facility, it appears that prison staff have been making every effort to address these problems on a continuing basis.

CONCLUSION

*4 The staff at San Quentin State Prison should be give high marks for the amazing turn around they have accomplished in the condemned housing unit located in “East Block”. The undersigned recommends to this Court that given all of the above information, the Consent Decree currently in place be VACATED. I cannot say whether staff at San Quentin State Prison will continue to make these efforts to afford the condemned population housed in San Quentin an adequate level of cleanliness within this housing facility, however, at this juncture it is my opinion that they have complied with the Court’s February 15, 2008 Order.