

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,  
Plaintiff,  
v.  
EDMUND G. BROWN, JR., et al.,  
Defendants.

No. 2:90-cv-0520 KJM KJN P

ORDER

On September 4, 2018, the Special Master filed a request for appointment of additional staff. ECF No. 5903. On September 5, 2018, the court granted any party the opportunity to respond to the request by September 6, 2018. ECF No. 5904. Defendants have timely filed a response. ECF No. 5908.

The Special Master seeks appointment of Dwight Steward, Ph.D. and the research firm of EmployStats, including but not limited to, Jeffrey Peterson, Ph.D., Valentyna Katsalap, Ph.D., Matt Rigling, and Susan Wirtanen.<sup>1</sup> The court has reviewed the curriculum vitae of these persons, which have been filed on the court’s docket. As an expert, Dr. Steward is to be compensated at the rate of five hundred dollars (\$500.00) per hour for his work and two hundred twenty-five dollars (\$225.00) per hour for travel time, plus reasonable expenses. As an expert

<sup>1</sup> Dr. Peterson has his own firm but will serve as a subcontractor of EmployStats for this assignment.

1 economist, Dr. Petersen is to be compensated at the rate of four hundred twenty-five dollars  
2 (\$425.00) per hour for his work. As an expert economist, Dr. Katsalap is to be compensated at  
3 the rate of three hundred dollars (\$300.00) per hour for her work. As an expert, Mr. Rigling is to  
4 be compensated at the rate of two hundred twenty-five dollars (\$225.00) per hour for his work.  
5 As an expert, Ms. Wirtanen is to be compensated at the rate of two hundred fifteen dollars  
6 (\$215.00) per hour for her work.

7 Defendants request that (1) these appointments be for a limited duration, not to  
8 exceed six months; and (2) these experts be required to prepare a stand-alone report that conforms  
9 to the requirements of, *inter alia*, Federal Rule of Civil Procedure 26(2)(B)(i)-(v).

10 The Special Master seeks the appointment of this team of labor economists to  
11 conduct labor market and salary analyses in an effort “to determine the potential efficacy of . . .  
12 collective bargaining salary and compensation increases” as part of an overall effort to bring  
13 defendants into compliance with required mental health staffing levels. That compliance is to be  
14 achieved by one year from October 10, 2017, or approximately one month from now. ECF No.  
15 5711. The Special Master is aware of the time constraints that attend the task for which he seeks  
16 the current appointments and the court assumes those constraints will inform his work with these  
17 experts. That task, to evaluate current salary rates and the efficacy, if any, of compensation  
18 increases on defendants’ ability to recruit and retain necessary mental health staff to comply with  
19 the October 10, 2017 order and the prior court orders described therein, is a discreet task. The  
20 court will limit the appointments to completion of the discrete task for which the appointments  
21 are made, as set forth in the request, but will not impose a specific time frame for completion of  
22 that task.  
23  
24

25 Defendants also request the experts be required to produce an expert report that  
26 meets the requirements of Federal Rule of Civil Procedure 26(2)(B)(i)-(v). Rule 26 governs  
27 disclosure by parties of expert testimony by witnesses who may be called at a trial. *See* Fed. R.  
28

1 Civ. P. 26(A). The Special Master is not a party to this action and Rule 26 does not apply to the  
2 work of his experts. Moreover, consistent with the history of these remedial proceedings, the  
3 work of these experts is for use as directed by the Special Master and not as an “independent  
4 source of evidence” in proceedings before this court. *Federal Trade Com’n v. Enforma Natural*  
5 *Products, Inc.*, 362 F.3d 1204, 1213 (9th Cir. 2004) (discussing circumstances under which court-  
6 appointed expert may be a witness subject to Federal Rule of Evidence 706).  
7

8 As provided by paragraph B(7) of this court’s December 11, 1995 order and good  
9 cause appearing therefore, IT IS HEREBY ORDERED that:

10 1. The Special Master’s September 4, 2018 request for appointment of  
11 additional staff, ECF No. 5903, is GRANTED; and

12 2. The Special Master is authorized to appoint Dwight Steward, Ph.D. and the  
13 research firm of EmployStats, including but not limited to, Jeffrey Peterson, Ph.D., Valentyna  
14 Katsalap, Ph.D., Matt Rigling, and Susan Wirtanen, as experts to perform the discreet duties set  
15 forth in the Special Master’s Request for the Appointment of Additional Staff, filed September 4,  
16 2018, and to be compensated at the rates set forth therein.  
17

18 DATED: September 11, 2018.

19  
20   
21 UNITED STATES DISTRICT JUDGE  
22  
23  
24  
25  
26  
27  
28