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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,  
 Plaintiffs,  
 v.  
 GAVIN NEWSOM, et al.,  
 Defendants.

Case No. 2:90-CV-00520-KJM-DB

**STIPULATION AND ORDER RE:  
 PARTIES' AGREEMENTS IN LIGHT  
 OF SECOND GOLDING REPORT**

Judge: Hon. Kimberly J. Mueller

1 The January 11, 2023 Stipulated Order extended the deadlines for Plaintiffs to file a  
2 motion regarding the second report submitted by Dr. Michael Golding (“Second Golding  
3 Report”), for Plaintiffs to notify Defendants of their intention to file any such motion, and  
4 for Defendants to file a motion to seal some or all portions of the report. ECF 7700 at 3;  
5 *see also* Dec. 29, 2022 Order, ECF No. 7690 at 3-4. On January 26, 2023, Plaintiffs  
6 notified Defendants of their intent to file a motion seeking clarification of certain prior  
7 orders in light of the allegations in the Second Golding Report. On February 1, 2023,  
8 Defendants provided Plaintiffs their assertions of privileged material contained in the  
9 Second Golding Report. The parties met and conferred by videoconference on February 3,  
10 2023 and on multiple occasions via email and phone up to and including the date of this  
11 filing, and discussed the privilege issues Defendants raised, as well as the relief Plaintiffs  
12 intended to seek. Based on these discussions, the parties stipulate as set forth below.<sup>1</sup>

13 1. In its October 12, 2018 Order, the Court ordered that “Defendants shall not  
14 retaliate against Dr. Golding or any person who assisted him in preparing his report.” ECF  
15 No. 5949 at 5; *see also* Oct. 18, 2018 Order, ECF No. 5973 at 3 (affirming Oct. 12, 2018  
16 Order); Nov. 7, 2018 Order, ECF No. 5999 at 1 (extending anti-retaliation order to Dr.  
17 Melanie Gonzalez). Defendants agree that these orders continue to apply today.  
18 Defendants represent that they have not unlawfully retaliated against Dr. Golding or any  
19 person who assisted him in preparing the Second Golding Report and agree that they will  
20 not do so in the future.

21 2. On January 22, 2020, Dr. Toche filed a declaration in response to the Court's  
22 December 23, 2019 remedial order on the evidentiary hearings regarding Dr. Golding's  
23 original whistleblower report (ECF No. 6435), and attached a memorandum, dated January  
24 13, 2020, that she circulated to all CDCR and California Correctional Health Care Services  
25 (CCHCS) staff. *See* Def. Dr. D. Toche's Resp. to Dec. 23, 2019 Order, ECF No. 6451-1

26 \_\_\_\_\_  
27 <sup>1</sup> This stipulation narrows, but does not resolve, all of the parties' disputes related to the  
28 Second Golding Report. The parties intend to file separate motions regarding the  
remaining disputes by the Court's February 9, 2023 deadline.

1 ¶ 5 & Ex. A at 2-3<sup>2</sup> (Jan. 22, 2020). Among other things, that memorandum advised  
2 CDCR and CCHCS employees that they “may engage with any member of the *Coleman*  
3 Special Master’s team at any time, whether it be at headquarters or in the field, regarding  
4 any mental health program issue or concern.” *Id.* at 3. Defendants agree to issue a new  
5 memorandum to all CDCR and CCHCS employees no later than March 1, 2023, reiterating  
6 that staff is free to communicate with the Special Master’s team at any time regarding any  
7 mental health program issue or concern, and providing information on how to do so.

8 3. In her January 22, 2020 declaration (ECF No. 6451-1 ¶ 8), Dr. Toche also  
9 stated:

10 And, CDCR intends to develop, in consultation with the  
11 Special Master and Plaintiffs’ counsel, a training module that  
12 explains the history of the *Coleman* case, its importance,  
13 CDCR’s renewed commitment and focus on patient care, and  
14 expectations for all CDCR staff. (*Id.*) Once the training design  
is complete and activated, it will be mandatory and CDCR will  
monitor compliance. CDCR will make the compliance reports  
available to the Special Master.

15 4. Due to the onset of the COVID-19 pandemic in March 2020, Defendants  
16 never fully developed this training concept in consultation with Plaintiffs’ counsel and the  
17 Special Master, though CDCR asserts it has and does conduct other related trainings  
18 consistent with its obligations. (Plaintiffs are not aware of any training in existence along  
19 the lines of what Dr. Toche described in her declaration.) Defendants agree to meet and  
20 confer with Plaintiffs’ counsel, in consultation with the Special Master, regarding the  
21 content of this training and provide a draft of the training module described above, by  
22 March 30, 2023, and agree to file an update with the Court on the status of the training  
23 module by April 24, 2023. Defendants agree that Plaintiffs and the Special Master may  
24 observe the training once it is implemented.

25 5. As part of the Parties’ meet and confer efforts, they also discussed  
26 Defendants’ concerns with respect to privilege and privacy issues raised by Dr. Golding’s

27 \_\_\_\_\_  
28 <sup>2</sup> References to Exhibit A to Dr. Toche’s declaration are to the PDF pagination.

1 Second Report. Following extensive discussions, Plaintiffs agreed to Defendants’  
2 assertions of one instance of attorney-client privilege and two instances of deliberative  
3 process privilege, though the Parties were unable to reach agreement as to Defendants’  
4 privacy concerns. The agreed-upon assertions of privilege are described in greater detail in  
5 the Declaration of Samantha Wolff In Support of Defendants’ Motion for Order  
6 Authorizing Redaction and Motion for *In Camera* Review.

7 **IT IS SO STIPULATED.**

8  
9 DATED: February 9, 2023

Respectfully submitted,

10 ROSEN BIEN GALVAN & GRUNFELD LLP

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12 By: /s/ Lisa Ells

13 Lisa Ells

14 Attorneys for Plaintiffs

15 DATED: February 9, 2023

HANSEN BRIDGETT LLP

17 By: /s/ Samantha D. Wolff

18 Samantha D. Wolff

19 Deputy Attorney General

20 Attorneys for Defendants

21  
22 **ORDER**

23 As provided by the parties’ stipulation and this court’s prior orders, defendants shall  
24 not unlawfully retaliate against Dr. Golding or any person who assisted him in preparing  
25 the Second Golding Report. By March 1, 2023, defendants shall issue a new  
26 memorandum to all CDCR and CCHCS employees reiterating that staff is free to  
27 communicate with the Special Master’s team at any time regarding any mental health  
28 program issue or concern. Also by March 1, 2023, defendants shall file a copy of the new

1 memorandum with the court. Defendants shall develop, in consultation with the Special  
2 Master and plaintiffs' counsel, the training module described in paragraph three of the  
3 parties' above stipulation no later than March 30, 2023. By March 30, 2023, defendants  
4 shall file a report with the court, confirming they have completed development of the  
5 training module. By April 24, 2023, defendants shall provide the court with  
6 documentation making the training mandatory as well as the schedule for deployment of  
7 the training throughout CDCR, along with other updates regarding the matters covered by  
8 the parties' stipulation.

9 **IT IS SO ORDERED.**

10 DATED: February 27, 2023.

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14 CHIEF UNITED STATES DISTRICT JUDGE  
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