

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.,

 Plaintiffs,

 v.

GAVIN NEWSOM, et al.,

 Defendants.

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

ORDER

With leave of court, ECF No. 7880, on July 25, 2023, the parties filed a joint statement concerning disputes that have arisen over ongoing tours by a team of experts with Voorhis Robertson Justice Services (VRJS) and Falcon, Inc. (together hereafter VRJS/Falcon). For the reasons explained in this order, defendants shall suspend the tours immediately pending further discussion at the August 10, 2023 status conference.

In October 2020, defendants contracted with VRJS/Falcon to assess, among other things, CDCR’s mental health program, its staffing levels and staffing ratios, and its delivery of mental health care. See Decl. of Falcon, ECF No. 7884, ¶ 2. In August 2022, VRJS/Falcon shared the results of an 18-month study with defendants. *Id.* ¶ 4 & Ex. B. Thereafter, “CDCR retained VRJS/Falcon to conduct a broader, systemwide study of CDCR’s Mental Health Services

/////

1 delivery system.” *Id.* ¶ 5. VRJS/Falcon has hired approximately 30 experts to complete this
2 study. *Id.*

3 In April 2023, defense counsel Paul Mello sent a letter to plaintiffs’ counsel and the
4 Special Master notifying them of the planned VRJS/Falcon study and that the study would
5 include on-site visits in prisons, likely starting in July 2023. Decl. of McClain, ECF No. 7885,
6 ¶ 2. On June 13, 2023, defense counsel Samantha Wolff sent an email to plaintiffs’ counsel and
7 the Special Master with specific tour dates for July and August. *Id.* ¶ 3. On June 20, 2023,
8 Ms. Wolff sent another email to plaintiffs’ counsel and the Special Master advising that the
9 VRJS/Falcon team wanted to interview patients and asking if plaintiffs would object. *Id.* On
10 June 22, 2023, plaintiffs’ counsel Michael Bien responded that plaintiffs did not consent to any
11 interviews by defense experts but that plaintiffs’ counsel might “cooperate in defendants’ efforts
12 to obtain interviews” if plaintiffs were provided enough information “to understand who will be
13 doing the interviews and for what purpose,” or perhaps if plaintiffs’ counsel were present and had
14 received “an opportunity to meet privately beforehand with the patient.” *Id.* ¶ 4. The parties have
15 had further discussions over the scope, if any, of patient interviews that may be conducted by the
16 VRJS/Falcon team. *See, e.g., id.* ¶¶ 7-8. Their joint statement reflects substantial disagreement at
17 this point over the permissible scope, if any, of patient interviews. *See generally* ECF No. 7883.

18 Broadly, the joint statement reflects disagreement over the purpose of these tours. *Id.*
19 More specifically, the parties disagree whether defendants must seek leave of court to reopen
20 discovery and conduct these tours and whether the court must set clear parameters for the tours.
21 *Id.* Defendants contend the tours are a “self-evaluation of their own system” consistent with their
22 “responsibility to ‘self-monitor, and as necessary, self-correct inadequacies in the delivery of
23 mental health care,’” and believe there is no court order requiring defendants to get permission
24 from the court for such tours. *Id.* at 8. The court is not persuaded.

25 Mr. Mello’s April 21, 2023 letter includes the following:

26 Please note that while Defendants have retained experts to evaluate the MHSDS,
27 Defendants have not made any decision to move for termination and are therefore
28 not providing notice pursuant to this Court’s February 21, 2018 Order. ECF 5794.
29 Defendants may, in the future, take action to terminate or modify all or parts of this

1 case — or none at all — pending the experts’ determination and recommendation(s),
2 at which time Defendants will provide six months’ notice as required by this Court’s
3 February 21, 2018 Order.

4 Decl. of Bien, Ex. A, ECF No. 7886, at 14.

5 The court’s February 21, 2018 order requires defendants to provide at least six months’
6 notice before filing a motion for termination. February 21, 2018 Order, ECF No. 5794, at 10.
7 The court issued the order against the backdrop then of defendants’ prior termination motion,
8 following which the court found defendants had violated California Rules of Professional
9 Conduct 2-100 by conducting *ex parte* interviews with class members represented by counsel and
10 using those interviews to support the termination motion. *Id.* at 1-2 (quoting ECF No. 4539
11 at 20-21). Defendants also had arranged a second set of unilateral prison tours by defense
12 consultants in late December 2017 and January 2018 to evaluate defendants’ staffing plan. *Id.* at
13 4-5. The court set the six month notice period to “serve[] the purposes of Federal Rules of Civil
14 Procedure 16 and 26 by permitting an orderly period of discovery and expert disclosures to
15 inform any litigation.” *Id.* at 9. The court expressly stated it would “not set a specific schedule
16 for expert discovery” in advance of such notice; rather, in the event defendants did file such
17 notice “the court will then set a discovery scheduling conference within one week after the filing
18 of the notice.” *Id.*

19 Based on the current record, defendants’ present tours are remarkably similar in nature to
20 the prior tours that led the court to issue the February 21, 2018 order. The evidence before the
21 court now regarding defendants’ current contracts with VRJS/Falcon does not square with the
22 representations in Mr. Mello’s April 21, 2023 letter that these tours are simply in aid of their
23 “responsibility to ‘self-monitor, and, as necessary, self-correct inadequacies in the discovery of
24 mental health care.’” ECF No. 7883 at 8.

25 ////

26 ////

27 ////

28 ////

29 ////

1 The issues raised by the parties' joint statement will be added to the agenda for the
2 August 10, 2023 status conference. Defendants shall immediately halt all VRJS/Falcon tours of
3 CDCR prisons until further order of the court.

4 IT IS SO ORDERED.

5 DATED: July 28, 2023.

6



CHIEF UNITED STATES DISTRICT JUDGE