

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs, No. 2:90-cv-0520 LKK JFM P

vs.

EDMUND G. BROWN, JR., et al.,

Defendants. ORDER

Plaintiffs have filed a motion for reconsideration of the part of this court's September 10, 2013 order that denied plaintiffs' motion to compel production of the mental health and central file records of five former inmates who have recently paroled or otherwise left a California Department of Corrections and Rehabilitation (CDCR) prison and of one individual confined in a CDCR prison pursuant to California Welfare and Institutions Code § 7301. (ECF No. 4791.) By order filed September 17, 2013, the assigned District Judge referred that motion back to the undersigned for resolution and directed defendants to file a response to the motion. (ECF No. 4810.) Defendants have timely filed an opposition.

In the papers now before the court on motion for reconsideration, plaintiffs focus on the general governing standard for discovery set forth in Federal Rule of Civil Procedure 26, and defendants describe with specificity those provisions of law they contend preclude providing

1 these records to plaintiffs' counsel. Upon further reflection, for the reasons set forth below, the
2 court now finds that the requested records are relevant to the motions pending in the district court
3 and are discoverable under the standard set forth in Rule 21 of the Federal Rules of Civil
4 Procedure. The undersigned further concludes that the provisions of law cited by defendants do
5 not prevent the production of the requested records to plaintiffs' counsel where, as here, the
6 records are all subject to a protective order. Accordingly, the motion for reconsideration will be
7 granted.

8 Plaintiffs seek reconsideration on the grounds that the records in question are
9 relevant to motions pending in the district court, are discoverable under the standard set forth in
10 Federal Rule of Civil Procedure 26 and that the court applied the wrong standard in denying their
11 motion to compel production of the records based upon the lack of a showing that the six inmates
12 in question were members of the plaintiff class. Plaintiffs also contend that, in any event, the
13 federal regulations implementing the Health Insurance Portability and Accountability Act
14 (HIPAA) authorize disclosure of medical records in litigation as long as the records are protected
15 by a protective order. Plaintiffs also seek reconsideration of this court's finding that plaintiffs
16 have not shown that individuals confined pursuant to Welfare and Institutions Code § 7301 are
17 part of the plaintiff class. Finally, plaintiffs seek confirmation that they may seek records of
18 those confined pursuant to Welfare and Institutions Code § 7301.

19 In opposition to the motion, defendants contend that none of these six individuals
20 are class members, and that non-class members have a privacy interest in the requested records
21 which defendants are required to protect under state law . Defendants also argue that individuals
22 confined pursuant to Welfare and Institutions Code § 7301 are not "inmates" and therefore not
23 part of the plaintiff class.

24 Rule 26 of the Federal Rules of Civil Procedure provides in relevant part:

25 Parties may obtain discovery regarding any nonprivileged matter
26 that is relevant to any party's claim or defense—including the
existence, description, nature, custody, condition, and location of

any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1). There is no dispute that the records plaintiffs seek meet the relevance standard of Rule 26 and are discoverable under that standard. Defendants assert, however, that they have obligations under state law to maintain the confidentiality of these records and cannot turn them over to plaintiffs counsel without signed waivers from the six individuals.¹ In this regard, defendants rely on California Code of Regulations § 3370(e) and California Civil Code § 56.10. The latter provision expressly authorizes disclosure of medical information if the information “is compelled by . . . a party to a proceeding before a court or administrative agency pursuant to . . . any provision authorizing discovery before a court or administrative agency.” Cal. Civ. Code § 56.10. The undersigned concludes that defendants are not precluded by this section from disclosing the records plaintiffs seek.

California Code of Regulations § 3370(e) provides that “[n]o case records file, unit health records, or component thereof shall be released to any agency or person outside the department, except for private attorneys hired to represent the department, the office of the attorney general, the Board of Parole Hearings, the Inspector General, *and as provided by applicable federal and state law.*” Cal. Code Regs. § 3370(e) (emphasis added). The records plaintiffs seek are relevant and discoverable under applicable federal law, and all of the records are covered by the protective order in this action, which applies to “all documents and information obtained in this action by plaintiffs’ counsel which identifies a patient or inmate

¹ Defendants originally asserted an obligation to protect the records under HIPAA. (See Joint Statement filed Sept. 6, 2013 (ECF No. 4787) at 4.) Defendants do not reassert a HIPAA obligation in their opposition to the pending motion for reconsideration, and plaintiffs contend, correctly, that HIPAA’s implementing regulations provide for disclosure of health records in this action where such disclosure is governed by a protective order. See 45 C.F.R. § 164.512(e)(ii)(B).

1 other than the named plaintiffs in this action.” (Modified Protective Order filed Jan. 12, 2007
2 (ECF No. 2109) at 1.)

3 For the reasons set forth above, the undersigned concludes that plaintiffs are not
4 required to obtain waivers from any of the six individuals in order to obtain the records at issue.
5 Those records are relevant to matters pending before the district court and are discoverable under
6 Federal Rule of Civil Procedure 26. They are subject to the previously issued protective order in
7 this action and none of the provisions of law cited by defendants prevent their production.
8 Accordingly, plaintiffs’ motion to compel production of these records will be granted and
9 defendants directed to produce the records forthwith.

10 Finally, the court finds it unnecessary to resolve as a general matter the question
11 of whether individuals confined in CDCR prisons pursuant to California Welfare and Institutions
12 Code § 7301 are members of the plaintiff class in order to resolve the discovery dispute now
13 pending before the court and therefore declines to do so. The records of the one individual so
14 confined sought by plaintiffs in the underlying motion to compel shall also be produced by
15 defendants.²

16 In accordance with the above, IT IS HEREBY ORDERED that:

17 1. Plaintiffs’ September 17, 2013 motion for reconsideration (ECF No. 4809) is
18 granted;

19 2. Upon reconsideration, plaintiffs’ September 6, 2013 motion to compel
20 production of records for the six individuals who defendants have refused to produce records
21 without waivers is granted;

22 ////

23 ² Nothing in this order or the court’s September 10, 2013 order should be construed as
24 authority to withhold from plaintiffs or the Special Master the records of any seriously mentally
25 ill individual treated in defendants’ Mental Health Services Delivery System (MHSDS) based
26 solely on an assertion that the individual(s) is not a member of the Coleman class. Any such
purported distinction made in the undersigned September 10, 2013 order was, for the reasons set
forth herein, simply not necessary to the resolution of plaintiffs’ motion to compel.

3. The records for the two such individuals who were the subject of use of force incidents shall be produced to plaintiffs not later than 5:00 p.m. on Wednesday, September 25, 2013; and

4. The remaining records shall be produced to plaintiffs not later than Friday, October 4, 2013.

DATED: September 23, 2013.

Dale A. Drozd
DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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