

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,  
Plaintiffs,

v.

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

No. CIV. S-90-520 LKK/DAD (PC)

**ORDER**

Defendants have filed a request for reconsideration of this court's January 30, 2014 order reopening discovery; they also seek to stay the magistrate judge's February 5, 2014 order concerning said discovery (ECF No. 5055).<sup>1</sup> Plaintiffs oppose the request (ECF No. 5056), and defendants have filed a reply (ECF No. 5057).

Defendants seek reconsideration of that part of the court's January 30, 2014 order that opened discovery as to whether relevant information concerning the September 7, 2013 death of a

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<sup>1</sup> Defendants request a hearing on their request for reconsideration. The request for reconsideration is resolved herein without oral argument.

1 Coleman class member was withheld from plaintiffs or the court  
2 during the course of the evidentiary hearing which commenced on  
3 October 1, 2013. The crux of the relevant<sup>2</sup> disagreement between  
4 the parties centers on whether defendants had any duty to produce  
5 a suicide report by November 7, 2013. Defendants contend that  
6 under both the Program Guide and paragraph 7 of a June 13, 2002  
7 order of this court (ECF No. 1384), where there is a genuine  
8 issue about whether a death is a suicide no suicide report is  
9 required until after the death is determined to be a suicide.  
10 Defs. Req. for Recon. (ECF No. 5055) at 3 n.2. Plaintiffs  
11 disagree. Pls. Resp. (ECF No. 5056) at 1-2.

12 Paragraph 7 of the court's June 13, 2002 order has been  
13 superseded by the court's March 3, 2006 order (ECF No. 1773)  
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15 <sup>2</sup> Defendants also contend (i) that discovery was opened based on  
16 "false" assertions by plaintiffs' counsel that certain documents  
17 related to this class member's death had not been downloaded or  
18 reviewed; (ii) that those documents were uploaded in September  
19 2013 and were sufficient to give plaintiffs fair notice of the  
20 facts and circumstances of this class member's death; and (iii)  
21 that plaintiffs should not be permitted to reopen discovery where  
22 they failed to timely review these documents. Plaintiffs have  
23 filed declarations of counsel correcting what they assert was a  
24 "mistake" concerning the time when certain documents were  
25 downloaded by a paralegal employed by plaintiffs' counsel. See  
26 Suppl. Decl of Bien, filed February 3, 2014 (ECF No. 5014); Decl.  
27 of Kahn, filed February 3, 2014 (ECF No. 5042). The court  
28 accepts these corrected representations. Defendants' contentions  
concerning whether plaintiffs were on inquiry notice sufficient  
to obviate whatever duties defendants may have had are  
insufficient to justify closing discovery on the question of  
whether relevant information concerning this class member's death  
was withheld from plaintiffs or the court during the course of  
the evidentiary hearing which commenced on October 1, 2013.  
Those contentions may be renewed, as appropriate, at a later  
stage of these proceedings should the court be required to decide  
what information should have been advanced when and by whom.

1 approving all undisputed provisions of that Revised Program Guide  
2 and ordering their immediate implementation.<sup>3</sup> Specific  
3 requirements for reporting on inmate suicides were included in  
4 the undisputed provisions of the Revised Program Guide approved  
5 and required to be implemented by that order, see January 2006  
6 Revised Program Guide (ECF No. 1753-10) at 12-10-23 through 12-  
7 10-29, and are controlling as to the matters covered therein.<sup>4</sup>

8 The June 13, 2002 order required production of a final  
9 suicide report to the special master's experts "within ninety  
10 days after any suicide or, if there is a genuine issue whether  
11 the death is a suicide, ninety days from the date on which said  
12 death is determined to be a suicide." (ECF No. 1384 at 2.) The  
13 Program Guide has changed the timeline for production of suicide  
14 reports to sixty days. Pl. Ex. 1200 at 12-10-24 to 12-10-26.  
15 There appears to be no provision in the Program Guide comparable  
16 to the alternative described in the June 13, 2002 order extending  
17 that timeline "if there is a genuine issue whether the death is a  
18 suicide."<sup>5</sup> As the Program Guide now stands, it outlines a Suicide  
19 Death Review process that commences with the completion of two

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21 <sup>3</sup> The Special Master's Report and Recommendations on Defendants'  
22 Revised Program Guide, filed February 3, 2006 (ECF No. 1749)  
23 describes the three-year process of "intense review, analysis and  
negotiation" that led to promulgation of the Revised Program  
Guide. (ECF No. 1749 at 2.)

24 <sup>4</sup> Those provisions remain in the current 2009 version of the  
25 Program Guide. See Pls. Ex. 1200, Program Guide 2009 Revision,  
at 12-10-23 through 12-10-29.

26 <sup>5</sup> The omission may well have been inadvertent and may suggest a  
27 revision of the Program Guide may be appropriate. If the present  
28 controversy turns out to prove nothing else, it may nonetheless  
have proved to have value.

1 forms: a CDCR 7229A *Initial Inmate Death Report*, a CDCR 7229B  
2 *Initial Inmate Suicide Report*. See Pls. Ex. 1200 at 12-10-24.  
3 Both of those documents were completed in the case of this class  
4 member's death and uploaded to the CDCR's secure website in  
5 September 2013. See Ex. 2 to Confidential Kahn Decl (ECF No.  
6 5049 \*SEALED\*); see also Sealed Belavich Decl. (ECF No. 5046-1  
7 \*SEALED\*). Under the timelines contained in the Program Guide a  
8 suicide report by the Mental Health Suicide Reviewer was due  
9 within sixty days of the class member's death. See Pls. Ex. 1200  
10 at 12-20-26.


11 Here, defendants contend that the notice of death provided  
12 on September 16, 2013 "disclosed that CDCR was uncertain whether  
13 [the class member]'s death was a suicide or accidental death."  
14 Defs. Req. for Recon. (ECF No. 5055) at 3 n.2. Defendants have  
15 also filed, under seal, a declaration from Dr. Tim Belavich,  
16 CDCR's Deputy Director of the Statewide Mental Health Program and  
17 the Director (Acting) of the Division of Health Care Services for  
18 the California Department of Corrections and Rehabilitation  
19 (CDCR) (ECF No. 5046-1 \*SEALED\*). In that declaration, Dr.  
20 Belavich avers that on October 31, 2013, the Suicide Case Review  
21 Subcommittee considered the case, found it did not appear the  
22 class member had committed suicide, and decided to await the  
23 coroner's report. Id. at ¶ 8.

24 The issues raised by plaintiffs' request to open discovery  
25 may, in the end, come down to nothing more than a disagreement  
26 about whether the Suicide Case Review Subcommittee could,  
27 consistent with the requirements of the Program Guide, under the  
28 circumstances of this class member's death defer completion and

1 forwarding of a suicide report pending receipt of the coroner's  
2 report.<sup>6</sup> Defendants argue forcefully that nothing "in the  
3 Program Guide or elsewhere . . . requires a suicide report for  
4 deaths of undetermined or accidental causes." Defs. Reply, filed  
5 February 7, 2014 (ECF No. 5057) at 2. The court need not resolve  
6 that question at this time. Here, a form CDCR 7229B *Initial*  
7 *Inmate Suicide Report* was completed three days after the class  
8 member's death. The notice provided by Dr. Belavich on September  
9 16, 2013 described the class member's death as "an apparent  
10 suicide/unknown death" and the record shows that several steps in  
11 the suicide review process were timely followed but the final  
12 report was not completed on the timeline set out in the Program  
13 Guide. Under the circumstances of this case, plaintiffs are  
14 entitled to conduct discovery into the reason(s) that timeline  
15 was not met.

16 For all of the foregoing reasons, IT IS HEREBY ORDERED that  
17 defendants' February 6, 2014 motion for reconsideration and to  
18 stay discovery (ECF No. 5055) is denied.<sup>7</sup>

19 DATED: February 7, 2014.

20   
21 LAWRENCE K. KARLTON  
22 SENIOR JUDGE  
UNITED STATES DISTRICT COURT

23 <sup>6</sup> The Program Guide provides that "[i]f, during the suicide review  
24 process, other death related information arrives, such as CDCR  
25 837 C, CDCR 7229 C, or Coroner's report, the DNC [Death  
26 Notification Coordinator] will locate the death review folder and  
27 place these documents inside. The DNC shall update the routing  
28 sheet and notify the SPR FIT [Suicide Prevention and Response  
Focused Improvement Team] Coordinator of the new information."  
Pls. Ex. 1200 at 12-10-28

<sup>7</sup> The court feels compelled to state to the parties that not every  
mistake is evidence of malicious intent.