

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

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

ORDER

As required by court order, this matter came on for telephonic status conference on October 17, 2018. ECF No. 5962. Lisa Ells, Esq., Jeffrey Bornstein, Esq., and Cara Trapani, Esq., participated by telephone conference as counsel for plaintiffs. Jay Russell, Supervising Deputy Attorney General, and Andrew Gibson, Elise Thorn and Tyler Heath, Deputy Attorneys General, participated by telephone conference as counsel for defendants. Wendy Musell, Esq., participated by telephone conference as counsel for Dr. Michael Golding. Special Master Matty Lopes and members of his staff, as well as other persons affiliated with defendants monitored the conference telephonically, as allowed by the court.

At hearing, the court made the following orders, now confirmed by this written order:

1. The hearing set to commence on Monday, October 22, 2018, at 1:00 p.m., is converted to a further full status conference. The purpose of the status conference is to address in

1 greater detail matters raised at the telephonic status conference and to consider a schedule of
2 proceedings going forward in light of the court's identification of three parallel tracks:

3 a. Potential fraud on court. Upon the court's identification of areas to address, the
4 parties will be given an opportunity to respond. Upon the court's preparation of a
5 final list, the court will conduct an evidentiary hearing to develop the record to
6 allow making a determination whether fraud actually has been committed, and if
7 so to what extent and the remedy required.

8 b. Repair or improvement of existing data reporting mechanisms, to achieve
9 accuracy and the ability to fully and fairly measure compliance going forward.
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11 c. Identification of provisions of prior court orders or the operative Program
12 Guide that may be unclear, such that amendments are needed to clarify definitions
13 of terms prescribing reporting and compliance obligations.
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15 The parties should also be prepared to address on October 22 how the court should
16 process communications received from other non-parties concerning these matters.

17 2. On or before Friday, October 19, 2018 at 12:00 noon, Dr. Golding shall submit
18 to the court *in camera*, the declaration his counsel indicated he is prepared to provide, verifying
19 under penalty of perjury that the contents of his report are true and correct and, to the extent
20 possible, authenticating the exhibits that accompany his report. Said declaration shall be
21 submitted to KJMOders@caed.uscourts.gov.

22 3. The court will notify Ms. Musell and the parties before Friday, October 19,
23 2018, as promptly as possible following receipt of Dr. Golding's declaration and not later than
24 5:00 p.m., whether Dr. Golding's attendance is required at the status conference on Monday,
25 October, 22, 2018.

26 4. On or before Friday, October 19, 2018 at 5:00 p.m., each party shall file a short
27 brief, and Ms. Musell may file a short brief, limited to five pages each, setting forth the legal
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1 standards that apply to the decision now before this court on whether to seal or unseal some or all
2 of Dr. Golding's report. The briefing shall focus on the standards that apply to sealing or
3 unsealing the report in these circumstances, where (a) Dr. Golding is not a party; (2) Dr. Golding
4 is employed by a party; and (3) Dr. Golding claims full whistleblower status. As clarified at the
5 status, the briefs should include legal standards only, without analysis.

6 5. With respect to defendants' application for reconsideration of paragraphs 3, 4,
7 and 5 of the court's October 12, 2018 order, the parties shall promptly meet and confer in good
8 faith and, to the extent possible, propose joint language to modify or clarify these provisions of
9 the October 12, 2018 order. If the parties cannot agree on joint language, they shall file their
10 separate proposals. Said proposal or proposals shall be filed on or before 9:00 a.m. on Thursday,
11 October 18, 2018. In addition, counsel for Dr. Golding may, by the same time, file and serve any
12 court orders or other legal authority that would aid in this court's consideration of the proper
13 scope of any modifications to its October 12, 2018 order. The court is prepared to clarify certain
14 provisions of that order following review of submissions received by the Thursday morning
15 deadline.

16 6. In light of the above, defendants' ex parte application for reconsideration, ECF
17 No. 5959, is DENIED as moot.

18 IT IS SO ORDERED.

19 DATED: October 17, 2018.

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22 UNITED STATES DISTRICT JUDGE
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