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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 RALPH COLEMAN, et al.,
12 Plaintiffs,

13 v.

14 EDMUND G. BROWN, JR., et al.,
15 Defendants.
16

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

ORDER

17 On October 5, 2018, plaintiffs notified the court that defendant California
18 Department of Corrections and Rehabilitation's Statewide Chief Psychiatrist, Dr. Michael
19 Golding, had issued a report alleging data submitted by defendants to this court has been
20 inaccurate and misleading. Pls.' Req., ECF No. 5936. On October 15, 2018, the parties
21 submitted a joint status report containing their respective positions on whether Dr. Golding's
22 report may be publicly filed and any redactions necessary to publicly file the report. It. St.
23 Report, ECF No. 5958. On October 17, 2018, after rejecting defendants' request to submit in
24 camera briefing, the court ordered the parties and gave Dr. Golding an opportunity to further
25 clarify "the legal standards that apply to the decision now before this court on whether to seal or
26 unseal some or all of Dr. Golding's report." Order, ECF No. 5967 at 2-3; ECF No. 5972 at 11
27 (transcript from Oct. 17, 2018 hearing). Dr. Golding's response is before the court, Golding
28 Resp., ECF No. 5976, as are defendants' response, Defs.' Resp., ECF No. 5977, and plaintiffs'

1 response, Pls.’ Resp. ECF No. 5978. At an October 22, 2018 status conference, the court
 2 provided the parties and Dr. Golding with an opportunity to clarify and bolster their respective
 3 positions in open court. Having considered the parties’ responses and arguments at the October
 4 22, 2018 status conference, the court DIRECTS the parties to prepare a version of Dr. Golding’s
 5 report and exhibits redacted to conform to this order, for filing on the court’s docket.

6 I. LEGAL STANDARD

7 “[T]he courts of this country recognize a general right to inspect and copy public
 8 records and documents, including judicial records and documents.” *Nixon v. Warner*
 9 *Communications*, 435 U.S. 589, 597 (1978) (footnotes omitted). “Unless a particular court record
 10 is one ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the starting point.”
 11 *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz v.*
 12 *State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

13 When a party moves to seal a record, the court looks to the underlying motion and
 14 determines whether it is “more than tangentially related to the merits of a case.” *Ctr. for Auto*
 15 *Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir.), *cert. denied sub nom. FCA U.S.*
 16 *LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016). If the motion is more than tangentially related
 17 to the merits of the case, a party seeking to seal the record must satisfy the “stringent” compelling
 18 reasons standard. *Id.* at 1096. Applying this standard, “a court may seal records only when it
 19 finds ‘a compelling reason and articulate[s] the factual basis for its ruling, without relying on
 20 hypothesis or conjecture,” and finds this reason outweighs the public’s interest and the
 21 presumption of public access. *Id.* at 1096-97 (quoting *Kamakana*, 447 F.3d at 1179).

22 When a motion is unrelated or only tangentially related to the merits of the case,
 23 the good cause standard, which is an “exception” to the “presumptive” compelling reasons
 24 standard, applies. *Id.* at 1097-98. To establish good cause, a party must show “specific prejudice
 25 or harm will result” absent sealing, *Foltz*, 331 F.3d at 1130, which may include the need “to
 26 protect a party or person from annoyance, embarrassment, oppression, or undue burden or
 27 expense,” *Ctr. for Auto Safety*, 809 F.3d at 1097 (quoting Fed. R. Civ. P. 26(c)).

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1 II. DISCUSSION

2 Plaintiffs argue Dr. Golding's report is inherently a public record and should be
 3 filed with minimal redactions of class members' names and identifying information, including
 4 CDCR numbers and other unique identifiers, consistent with the modified protective order in this
 5 action. ECF No. 2109 (modified protective order); Jt. St. Report at 2-6; Pls.' Resp. Dr. Golding
 6 himself requests his report be made public with all patient information redacted, but expresses no
 7 opinion as to whether employees' names should be redacted. Golding Resp. Defendants urge the
 8 court to apply the good cause standard and either seal Dr. Golding's report in its entirety pending
 9 any investigation by the state or allow redactions of government employees' identifying
 10 information. See Jt. St. Report at 6-9; Defs.' Resp. The court addresses each argument below.

11 A. The Compelling Reasons Standard Applies

12 Defendants have not shown that the good cause standard, which is an "exception"
 13 to the "presumptive" compelling reasons standard, applies here. See *Ctr. for Auto Safety*, 809
 14 F.3d at 1097; *id.* at 1098 ("[T]he 'compelling reasons' standard applies to most judicial records.")
 15 (quoting *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 677–78 (9th Cir. 2009) (emphasis
 16 omitted)). Defendants' argument at hearing suggests their theory arises from *Center for Auto*
 17 *Safety*, in which the Ninth Circuit clarified that "public access to filed motions and their
 18 attachments does not merely depend on whether the motion is technically 'dispositive'" but
 19 instead "turn[s] on whether the motion is more than tangentially related to the merits of a case."
 20 See 809 F.3d at 1101 (footnote omitted). At hearing, defendants suggested that Dr. Golding's
 21 report is not directly related to the merits of this case and is not a judicial record because the
 22 report was not filed by a party and was not accompanied by a motion.

23 To the extent the court understands this argument, it is not persuaded. The report
 24 was submitted by plaintiffs for in camera review on October 5, 2018 and was accompanied by
 25 plaintiffs' request for a status conference to address Dr. Golding's "very serious" claims, which
 26 "if true, have far reaching implications affecting almost every aspect of this case." Pls.' Req. at 2.
 27 That same day, defendants filed a request to stay a scheduled evidentiary hearing on a central
 28 aspect of the remedy in this case, or instead hold a status conference in light of Dr. Golding's

1 allegations “that potentially impact the evidence that Defendants were preparing to present at the
2 evidentiary hearing . . . other pending matters related to staffing . . . and [indicate] that
3 psychiatrists . . . are not seeing patients as reported in the data tracking system.” Defs.’ Resp. at
4 2. Defendants also offered to submit the report for in camera review. *Id.* Accordingly, both
5 parties have invited the court to consider Dr. Golding’s report and have treated that report as
6 “directly related to the merits of the case.” *Ctr. for Auto Safety*, 809 F.3d at 1098. Defendants’
7 present suggestion that the report is somehow “unrelated” or only “tangentially related” to issues
8 at the heart of this case is irreconcilable with defendants’ actions and the court’s proceedings with
9 respect to the report to date.

10 The court also is unpersuaded by defendants’ related contention that the report is
11 not entitled to the “gravitas” the term “judicial record” is accorded in relevant case law. Although
12 neither the parties nor the court have identified authority addressing the precise scenario here, the
13 court finds no basis for treating Dr. Golding’s report as anything but a judicial record. To the
14 contrary, the court finds that as with materials obtained in discovery, which may be protected
15 without necessarily implicating the presumption of public access, the report’s “status change[d]”
16 when it was submitted to the court by one party and became the subject of requests for court
17 action by both parties. *See Foltz*, 331 F.3d at 1134 (citations omitted). At that point, the
18 presumption of public access and the compelling reasons standard attached. *See id.* Indeed, Dr.
19 Golding’s report is not only before the court, it has been the subject of multiple proceedings, it
20 has prompted both parties to reconsider their paths moving forward, and it requires this court’s
21 continued attention because it potentially implicates the accuracy of data and related information
22 the court relies on to assess whether defendants are complying with court orders and progressing
23 toward a durable remedy in this long running case. Defendants have identified no basis for
24 finding the report is entitled to less gravitas than documents obtained in discovery and later filed
25 in connection with a motion for summary judgment. *See id.* at 1134-35 (citing *San Jose Mercury*
26 *News, Inc. v. U.S. Dist. Court--N. Dist. (San Jose)*, 187 F.3d 1096, 1102 (9th Cir. 1999); *Republic*
27 *of the Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 660 (3d Cir. 1991)).

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B. The Report Should Not Be Sealed in Its Entirety

Defendants have not identified “a compelling reason” for sealing that extends beyond “hypothesis or conjecture.” *See Ctr. for Auto Safety*, 809 F.3d at 1096-97 (quoting *Kamakana*, 447 F.3d at 1179). Examples of compelling reasons include using court records “to ‘gratify private spite or promote public scandal,’ to circulate ‘libelous’ statements, or ‘as sources of business information that might harm a litigant’s competitive standing.’” *Id.* (quoting *Nixon*, 435 U.S. at 598-99). Ultimately, “[w]hat constitutes a ‘compelling reason’ is ‘best left to the sound discretion of the trial court.’” *Id.* (quoting *Nixon*, 435 U.S. at 599).

Defendants argue Dr. Golding’s report should remain under seal until any state investigation of the report’s allegations concludes, to preserve “[d]efendants’ ability to maintain a collaborative working relationship between staff within the Mental Health Services Delivery System (MSDS)” and avoid “compromising an independent investigation.” *Jt. St. Report* at 6-7. The court finds defendants have not met their burden and, in any event, the public’s interest in accessing Dr. Golding’s report outweighs defendants’ articulated interests.

Although defendants purport to rely on “similar contexts” in which complaints are sealed pending government investigation, the rationales for sealing in those contexts do not apply here. *See* *Defs.’ Resp.* at 3-4 (citing the California Whistleblower Act and the False Claims Act). Dr. Golding provided his report to the court-appointed Receiver in *Plata v. Brown*, Case No. C-01-cv-1351 JST, J. Clark Kelso, who serves in that capacity as an arm of the court, rather than submitting it to the California State Auditor, who would have afforded him confidentiality. *See* *Ells Decl.*, ECF No. 5936-1, ¶ 2 (noting Dr. Golding submitted his report to the Receiver’s Office); Cal. Gov’t Code § 8547.5(c)(1). The Receiver provided the report to the Special Master in this case. Further, Dr. Golding did not initiate an action that would have sealed the report and delayed its service on defendants while the state conducted an investigation. *See* Cal. Gov’t Code § 12652(c)(2). Defendants provide no authority suggesting that statutory provisions enacted to protect whistleblowers or prevent disclosure of fraud allegations should apply to defendants here. *Cf. In re Hewlett-Packard Co. S’holder Derivative Litig.*, No. 12-CV-6003, 2015 WL 8570883, at *6 (N.D. Cal. Nov. 18, 2015), *report and recommendation adopted*, No. 12-CV-6003-CRB, 2015

1 WL 8479543 (N.D. Cal. Dec. 10, 2015), *aff'd*, 716 F. App'x 603 (9th Cir. 2017) (sealing
2 documents identifying whistleblower whose “identity has never been made public” to avoid
3 “premature disclosure” and “interfere[nce] with the ongoing investigations by making the
4 whistleblower a target of intimidation or harassment”).

5 The court does not accept defendants’ argument that sealing is necessary to protect
6 the integrity of any future investigation the state will undertake, criminal or otherwise. *See* Defs.’
7 Resp. at 4 (citing *DISH Network, L.L.C. v. Sonicview USA, Inc.*, No. CIV. 09CV1553-L NLS,
8 2009 WL 2579052, at *2 (S.D. Cal. Aug. 20, 2009) (redacting names of confidential informants
9 from motion papers based in part on need to prevent “jeopardiz[ing] ongoing piracy
10 investigations”)). Nothing before the court suggests the state’s interest in investigating the
11 allegations in Dr. Golding’s report automatically entitles the state to shield that report from the
12 public’s view. Defendants have not identified any authority that sanctions, must less requires,
13 privileging the integrity of any future state investigation over the actual proceedings taking place
14 in this court.

15 Finally, after careful consideration, the court declines defendants’ request to seal
16 Dr. Golding’s report to prevent “harm [to] the culture and working relationships within
17 [defendant] institutions,” including damaging “the relationship between psychologists and
18 psychiatrists, and other members of the patients’ treatment teams, by attacking the core values of
19 the systems, the organization of the system, and every clinician’s professional and personal value
20 and integrity.” Jt. St. Report at 8-9. To the extent defendants’ argument arises from the Report’s
21 “unverified” nature, *see id.* at 8, Dr. Golding has now verified his report and authenticated its
22 exhibits under penalty of perjury, *see* ECF No. 5964 (Oct. 17, 2018 hr’g mins calling for
23 declaration submitted in camera), and Dr. Golding’s declaration previously provided to the court
24 in camera will be filed on the court’s docket following entry of this order. Moreover, defendants
25 have not identified any authority that supports sealing a document of great public importance
26 merely because its contents are upsetting, particularly where, as here, the report’s serious
27 allegations challenge the integrity of documents filed with a federal court and there is no
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1 indication the report is intended merely to “gratify private spite or promote public scandal.” See
2 *Nixon*, 435 U.S. at 598 (citations and internal quotation marks omitted).

3 In sum, defendants have not concretely identified and supported any interest that
4 outweighs the public’s significant interest in access to the substance of Dr. Golding’s report. To
5 the contrary, the court finds Dr. Golding’s report is a document that should be available to the
6 public to maintain accountability and reaffirm the public’s “confidence in the administration of
7 justice.” See *Ctr. for Auto Safety*, 809 F.3d at 1096 (citation and internal quotation marks
8 omitted).

9 C. Certain Employee Identifying Information Should Be Redacted Pending
10 Further Clarification

11 As clarified below, defendants have not provided specific compelling reasons to
12 redact individual public employees’ names, titles, emails and telephone numbers from the reports,
13 though there is no disagreement that employees’ personal addresses and personal telephone
14 numbers should be redacted. See Pls.’ Resp. at 4 n.2 (citing Cal. Gov’t Code § 6254(u)(2) & (3);
15 ECF No. 2833 at 7). Nonetheless, on the evening of October 23, 2018, defendants provided in
16 camera their proposed redactions, after this matter was submitted and while the court was
17 preparing to issue this order. The court has taken the time to review defendants’ proposed
18 redactions and, for reasons also explained below, is prepared to approve certain of defendants’
19 proposed redactions, but not all of them, pending further order of the court.

20 Defendants have argued, with little elaboration, that Dr. Golding’s report may
21 “libel CDCR employees,” “promote public scandal” and harm employees’ reputations. *Jt. St.*
22 *Report* at 7-8; *Defs.’ Resp.* at 4-5. That public employees may be embarrassed by Dr. Golding’s
23 accusations, or may dispute the content of his report, does not necessarily require this court to
24 seal the report or redact employees’ identifying information. See *Kamakana*, 447 F.3d at 1179
25 (“The mere fact that the production of records may lead to a litigant’s embarrassment,
26 incrimination, or exposure to further litigation will not, without more, compel the court to seal its
27 records.”) (citing *Foltz*, 331 F.3d at 1136); *id.* at 1184 (“Simply mentioning a general category of
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1 privilege, without any further elaboration or any specific linkage with the documents, does not
2 satisfy the burden.”).

3 Aside from declining to concretely and specifically address the risks to public
4 employees, defendants rely on inapplicable authority. *See* Defs.’ Resp. at 4-5 (citing decisions
5 involving non-governmental employees, FOIA requests, wiretapping documents). As plaintiffs
6 note, the California Supreme Court has held that public employees’ basic identifying information
7 is generally not protected from disclosure. Pls.’ Resp. at 5 (citing, *inter alia*, *Comm’n on Peace*
8 *Officer Standards & Training v. Superior Court*, 42 Cal. 4th 278, 302 (2007) (officers’ names,
9 employing departments and dates of employment could be disclosed); *Long Beach Police*
10 *Officers Assn. v. City of Long Beach*, 59 Cal. 4th 59, 74 (2014) (public’s interest in disclosure of
11 names of peace officers involved in shootings outweighed officers’ interest in privacy where
12 officers’ Union and the city did not make the necessary “particularized showing”)); *see also*
13 *Lissner v. U.S. Customs Serv.*, 241 F.3d 1220, 1223 (9th Cir. 2001) (noting that although
14 “individuals do not waive all privacy interests in information relating to them simply by taking an
15 oath of public office, [] by becoming public officials, their privacy interests are somewhat
16 reduced”); *but see Lahr v. Nat’l Transp. Safety Bd.*, 569 F.3d 964, 977 (9th Cir. 2009)
17 (recognizing in FOIA context, public employees’ “legitimate interest in keeping private matters
18 that could conceivably subject them to annoyance or harassment,” including “their involvement in
19 investigations of especially controversial events”) (citations and internal quotation marks
20 omitted); *id.* (noting “lower level officials . . . ‘generally have a stronger interest in personal
21 privacy than do senior officials.’”) (quoting *Dobronski v. FCC*, 17 F.3d 275, 280 n.4 (9th Cir.
22 1994)). Further, defendants have not attempted to explain how any portions of the report they
23 wish redacted can be excised without compromising the content of the report as a whole.

24 In sum, despite being afforded multiple opportunities to do so, defendants have not
25 specifically identified any concrete risk faced by public employees should Dr. Golding’s report be
26 made public, have not explained how their proposed redactions are narrowly tailored, and have
27 not identified a single authority that compels the result they seek. That said, as explained below,
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1 the court is prepared to exercise its discretion at this stage to approve certain redactions proposed
2 by defendants, pending further order of the court.

3 Defendants' proposed redactions of employee identifying information may be
4 grouped generally into three categories: (1) employees who participated in decisions or
5 policymaking challenged by the report; (2) employees who assisted Dr. Golding in preparation of
6 the report, or whose correspondence or medical notes Dr. Golding relied on in preparing and
7 supporting the report, some of whom may also be entitled to whistleblower status; and
8 (3) employees whose performance of their duties incidentally relates to Dr. Golding's allegations.
9 Within these categories, the court provisionally approves defendants' proposed redactions of: (1)
10 current and former employees' names; (2) current and former employees' employment titles, but
11 only where an employment title is expressly linked to a name or a specific prison so as to disclose
12 a person's identity; and (3) any other information that serves to identify an individual other than
13 Dr. Golding, including government telephone numbers and email addresses.

14 Defendants' other proposed redactions are rejected, including defendants'
15 proposed redaction of general employment titles not specifically tied to an individual. *See, e.g.,*
16 *Defs.' Proposed Redactions of Michael Golding, M.D., CDCR Mental Health System Report* at
17 12 (redacting "Deputy Directors of Mental Health"); *id.* at 17 (redacting "Assistant Deputy
18 Director" and "Associate Deputy Director"); *id.* at 99 (redacting "unlicensed psychology intern").

19 The court's limited approval of certain redactions is based on the sensitive nature
20 of information in the report and exhibits, the possibility individuals other than Dr. Golding
21 identified in the report may claim whistleblower status or otherwise may face serious
22 ramifications, the current lack of clarity in the court's mind whether defendants are authorized to
23 speak on behalf of some or all of the individuals identified, and the court's determination that the
24 redactions it is approving leave the report and exhibits substantively intact. *Cf. Foltz*, 331 F.3d at
25 1137 (finding limited redaction of medical and personnel records to protect third-party privacy
26 interests "while leaving other meaningful information" publicly available was appropriate); *U.S.*
27 *v. Amalgamated Life Ins. Co.*, 534 F.Supp. 676, 679 n.5 (S.D.N.Y. 1982) (noting "there is [] a
28 danger in recognizing standing for a party asserting the privacy rights of others when the interests

of the party asserting the privacy rights and the parties possessing the privacy rights differ"). At this juncture, in other words, the court finds for now that the individual employees' potentially significant privacy interests balanced against the public's interest in access warrants these limited redactions, which preserve the substance of the report in its entirety.

D. Other Third-Party Correspondence

The court will provide the Special Master and the parties with any third-party correspondence it receives that is directly responsive or otherwise directly related to Dr. Golding's report. The court will not, however, file these documents on the public docket.

III. CONCLUSION

Defendants have not met their burden in establishing that full sealing or extensive redaction of Dr. Golding's report is warranted, though, as explained above, the court finds certain redactions are currently necessary to protect third parties' privacy interests. The parties, in consultation with Dr. Golding's counsel, are DIRECTED to prepare a redacted version of the report and exhibits that conform to this order. Dr. Golding's counsel is DIRECTED to prepare a redacted version of the Dr.'s verifying declaration and exhibits, coordinating with other counsel as she deems appropriate. The parties and Dr. Golding's counsel are further DIRECTED to jointly submit the redacted versions to KJMOOrders@caed.uscourts.gov by the close of business on Tuesday, October 30, 2018. The court will file the redacted versions on the public docket on Wednesday, October 31, 2018 and will revisit whether the approved redactions remain appropriate at a later date after further proceedings, in connection with which the parties will have an opportunity to brief the issue.

IT IS SO ORDERED.

DATED: October 25, 2018.


UNITED STATES DISTRICT JUDGE