

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN.

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

Plaintiff,

V.

EDMUND J. BROWN, JR., et al.,

ORDER APPOINTING
NEUTRAL EXPERT

The court appoints Charles J. Stevens, Esq. of Gibson, Dunn & Crutcher LLP to serve as the court's neutral expert in accordance with Federal Rule of Evidence 706. Mr. Stevens may utilize additional staff from Gibson, Dunn & Crutcher LLP or retain additional staff to form an investigative team as he deems necessary to the full, fair and efficient fulfillment of the neutral expert's duties under this order. The additional staff may include but not be limited to Benjamin Wagner, Esq. Mr. Stevens shall identify any additional staff besides Mr. Wagner for approval by the court in advance of their utilization or retention.

The purpose of this appointment is to assist the court in investigating allegations raised in the verified report of Dr. Michael Golding, Chief Psychiatrist for the California Department of Corrections and Rehabilitation (CDCR) (Golding Report), ECF No. 5988, to determine whether defendants have committed any fraud on the court or the Special Master, or

1 have intentionally provided false or misleading information to the court or the Special Master.¹
2 See Orders filed November 13 and 29, 2018, and December 13, 2018. The specific areas of
3 investigation are described below.

4 A. Duties of the Neutral Expert

5 It is HEREBY ORDERED that the duties of the neutral expert are and shall be
6 limited to the following:

7 1. To conduct an independent investigation to identify whether facts exist raising
8 a question whether defendants committed fraud on the court or intentionally misled the court or
9 the Special Master regarding the following matters raised in the Golding Report:

10 a. Lengthening the intervals between psychiatric appointments beyond
11 court-mandated timelines for inmate-patients at the Correctional Clinical Case Management
12 System (CCCMS) and Enhanced Outpatient Program (EOP) levels of care who are transferred to
13 new institutions by resetting the clock for such appointments from the time of transfer rather than
14 from the last completed appointment, rescheduling such appointments at the maximum time
15 allowed in the Program Guide, and reporting compliance with Program Guide requirements using
16 the reset timelines. *See* Golding Report, ECF No. 5988-1 at 1, 14-23.²

17 b. Lengthening the interval between psychiatrist appointments for EOP
18 inmate-patients and reporting compliance based on the extended intervals. *See id.* at 2, 23-26.

19 c. Combining CCCMS and EOP appointment compliance numbers into
20 one reporting category. *See id.* at 26-27.

21 d. Inflating compliance numbers by counting every encounter between a
22 psychiatrist and an inmate-patient as an appointment for purposes of measuring Program Guide

23 ¹ The redacted version of the Golding Declaration and Report and accompanying exhibits
24 is filed at ECF No. 5988 and is the version to which the court cites in this and all related orders.
25 An unredacted version of the Golding Report is maintained under seal at ECF No. 5990 and will
26 be made available to the independent investigator following his appointment.

27 ² The page numbers in this order for documents filed in the court's Electronic Case Filing
28 (ECF) system are to the page number assigned by the ECF system located in the upper righthand
corner of each page.

1 timeline compliance, without regard to whether the encounter was a psychiatry appointment or,
2 e.g., a wellness check or a cell-front attempt to communicate with an inmate patient. *See id.* at 5-
3 6, 54-57.

4 e. The manner of reporting of scheduled appointments and missed
5 appointments. *See id.* at 7-8, 35-47, 62-63.

6 f. Failing to report that psychiatric supervisors were also performing some
7 or all the functions of staff psychiatrists. *See id.* at 5, 56-57.

8 g. The way in which medication non-compliance is measured. *See id.* at 8,
9 58-62.

10 The scope of the court's expert's investigation may be expanded by order of this
11 court after consideration of a request of the expert, the Special Master, or any party, based on a
12 showing that allegations of the Golding Report or facts identified during the investigation, or
13 both, warrant such expansion.

14 2. To consult with the Special Master as necessary to achieve efficiencies in the
15 discharge of the investigative duties required by this order, without involving the Special Master
16 in the investigation itself. In particular, the expert shall consult with the Special Master to assist
17 in the determination of what types of data and information in the areas covered by section
18 A(1)(a)-(g) above are required by the Program Guide, orders of this court, and directives of the
19 Special Master. All such consultations shall be conducted in the presence of the parties to this
20 action.

21 3. To submit to the court within four months a report identifying whether there is
22 evidence sufficient to warrant an evidentiary hearing into whether defendants have intentionally
23 presented false or misleading information to the court in one or more of the areas addressed in the
24 Golding Report and, if so, identifying that evidence. The time allowed for completion of the
25 report will be extended only upon a showing that substantial work remains to complete the duties
26 assigned by this order. The court will distribute the report to the parties upon receipt, and make
27 further orders for filing and consideration of the report upon consultation with the parties.

1 4. The duties set forth in this order may be further specified, expanded or
2 modified only by order of this court.

3 B. Powers of the Neutral Expert

4 IT IS FURTHER ORDERED that the neutral expert shall have such powers as are
5 necessary to the duties assigned by this order, including:

6 1. To interview correctional staff, employees, and appointees of the California
7 Department of Corrections and Rehabilitation (CDCR). Defendants shall provide suitable
8 facilities and arrange for such interviews to be conducted under conditions satisfactory to the
9 neutral expert.

10 2. To interview defendant Governor Edmund G. Brown and members of his staff.
11 Defendants shall provide suitable facilities and arrange for such interviews to be conducted under
12 conditions satisfactory to the neutral expert.

13 3. To interview counsel for defendants and members of their staff. Defendants
14 shall provide suitable facilities and arrange for such interviews to be conducted under conditions
15 satisfactory to the neutral expert.

16 4. To have access to the records, files and papers maintained by defendants to the
17 extent that such access is related to the performance of the neutral expert's duties under this
18 Order. Such access shall include all departmental, institutional, and inmate records, including but
19 not limited to, central files, medical records, and mental health records. The neutral expert may
20 obtain copies of all such relevant records, files, and papers.

21 5. The powers described herein may only be modified by order of this court.

22 C. Compensation of the Neutral Expert

23 IT IS FURTHER ORDERED that the neutral expert and any of his staff shall be
24 compensated at a reasonable blended hourly rate per hour for services performed as approved by
25 the court. The expert shall not be compensated for travel time to and from Sacramento,
26 California. All reasonable expenses incurred by the neutral expert in performing duties under this
27 order shall be reimbursed as costs.

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1 The independent investigator's fees and expenses shall be borne by the defendants,
2 consonant with the provisions of Federal Rule of Evidence 706(c), as part of the costs of this
3 action. The matter of payment of the independent investigator's fees is referred to the assigned
4 magistrate judge. The fees will be paid using the following process:

5 (1) The independent investigator will submit to the court a proposed monthly
6 invoice for services rendered, summarizing time spent and expenses incurred, which the court
7 will initially review. The proposed invoice shall be emailed to dborders@caed.uscourts. After
8 review the court will provide a copy of the invoice to the parties.

17 After this process has been completed in full, the matter of payment of the invoice
18 will then be submitted to the court for review and, as appropriate, issuance of an order for
19 payment of the final invoice.

20 || DATED: December 14, 2018.



UNITED STATES DISTRICT JUDGE