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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 2:90-CV-00520-KJM-DB

**DECLARATION OF CARA E.
TRAPANI IN SUPPORT OF
PLAINTIFFS' POSITION IN JOINT
STATUS REPORT REGARDING
FILING OF GOLDING REPORT
WITH REDACTIONS**

Judge: Hon. Kimberly J. Mueller
Date: October 22, 2018
Time: 1:00 PM
Crtrm.: 3

I, Cara E. Trapani, declare:

1. I am an attorney duly admitted to practice before this Court. I am an associate in the law firm of Rosen Bien Galvan & Grunfeld LLP, counsel of record for Plaintiffs. I have personal knowledge of the facts set forth herein, and if called as a witness, I could competently so testify. I make this declaration in support of Plaintiffs'

1 position in the Joint Status Report Re: Filing of Golding Report With Redactions, filed
2 herewith.

3 2. In multiple communications following the October 10, 2018 hearing in this
4 matter, Deputy Attorney General Andrew Gibson, representing Defendants, met and
5 conferred with attorneys in my office regarding submitting a redacted version of a report
6 recently released by CDCR's Chief Psychiatrist, Dr. Michael Golding, and exhibits thereto
7 ("the Golding Report").

8 3. Attached hereto as **Attachment A** is a true and correct copy of an email
9 chain between Lisa Ells, a partner at my firm, and Mr. Gibson. As set forth in the email,
10 Mr. Gibson and Ms. Ells met and conferred on Friday, October 12, 2018, regarding a plan
11 for submitting the redactions and the scope of the redactions. On Friday afternoon,
12 Defendants confirmed their position that they were requesting that CDCR employee names
13 and titles be redacted from the report and that they would send legal authority for that
14 position on Monday morning, October 15, 2018. However, on Monday morning,
15 Defendants did not provide their position to Plaintiffs and instead notified Plaintiffs of
16 their intent to file a separate statement by the 5:00 p.m. deadline.

17 4. After further emails between Ms. Ells and Mr. Gibson, I and Marc J. Shinn-
18 Krantz, an associate at my office, called Mr. Gibson at 1:00 p.m. on October 15, 2018 to
19 further meet and confer. During that phone call, Mr. Gibson informed us for the first time
20 that Defendants' position was that the entire Golding Report should remain under seal.
21 Mr. Gibson also informed us that Defendants were not prepared to share their legal
22 authority for this position with Plaintiffs until later in the afternoon.

23 5. At 2:40 p.m. Mr. Gibson called me to meet and confer further. He confirmed
24 Defendants' position that they would request to keep the entire Golding Report under seal,
25 and only argue in the alternative that the Golding Report should be filed with all
26 identifying information redacted. Mr. Gibson confirmed that this position was new and
27 different from Defendants' position as communicated to Ms. Ells on Friday, October 12.
28

1 Mr. Gibson also informed me that Defendants would first share their legal authority for the
2 position at or around 4:00 p.m., one hour before the filing deadline.

3 I declare under penalty of perjury under the laws of the United States of America
4 that the foregoing is true and correct, and that this declaration is executed at San Francisco,
5 California this 15th day of October, 2018.

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7 Cara E. Trapani
8 Cara E. Trapani
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Attachment A

From: Andrew Gibson <Andrew.Gibson@doj.ca.gov>
Sent: Monday, October 15, 2018 2:14 PM
To: Lisa Ells
Cc: Elise Thorn; Coleman Team - RBG Only
Subject: RE: Coleman - Redactions to Golding Report

Lisa –

We're working on our portion of the joint statement and will get it to you as soon as possible.

Andy

From: Andrew Gibson
Sent: Monday, October 15, 2018 12:49 PM
To: 'Lisa Ells' <LElls@rbgg.com>
Cc: Elise Thorn <Elise.Thorn@doj.ca.gov>; Coleman Team - RBG Only <ColemanTeam-RBGOnly@rbgg.com>
Subject: RE: Coleman - Redactions to Golding Report

Lisa –

I just left you a VM regarding the below. Please call me at your earliest convenience.

Andy

From: Lisa Ells <LElls@rbgg.com>
Sent: Monday, October 15, 2018 12:43 PM
To: Andrew Gibson <Andrew.Gibson@doj.ca.gov>
Cc: Elise Thorn <Elise.Thorn@doj.ca.gov>; Coleman Team - RBG Only <ColemanTeam-RBGOnly@rbgg.com>
Subject: RE: Coleman - Redactions to Golding Report

Andy,

Further to the same, to the extent there was any ambiguity (which we dispute) the Court's minute order makes it explicit that a joint filing is required.

Please send us your position ASAP as you agreed to do on Friday.

From: Lisa Ells
Sent: Monday, October 15, 2018 12:29 PM
To: 'Andrew Gibson' <Andrew.Gibson@doj.ca.gov>
Cc: Elise Thorn <Elise.Thorn@doj.ca.gov>; Coleman Team - RBG Only <ColemanTeam-RBGOnly@rbgg.com>
Subject: RE: Coleman - Redactions to Golding Report

Andy,

We strongly disagree with your reading. The Court anticipates a joint filing. Specifically, the Order says: "On or before Monday, October 15, 2018, at 5:00 p.m., *the parties* shall file a redacted version of Dr. Golding's report and exhibits, *or* an explanation why any part [sic] believes the documents cannot be filed in redacted form." (emphasis added)

We have continued to ask for the basis for, and authority supporting, Defendants' position that CDCR employee names and titles should be redacted. You informed me you would provide us with that authority this morning. We still do not know the basis for your position or even the rationale. We cannot and should not have to guess at that, particularly since you are refusing a joint filing.

Please provide us with your position so that we can comply with the Court's order in good faith.

Lisa

From: Andrew Gibson <Andrew.Gibson@doj.ca.gov>

Sent: Monday, October 15, 2018 11:18 AM

To: Lisa Ells <LElls@rbgg.com>

Cc: Elise Thorn <Elise.Thorn@doj.ca.gov>; Coleman Team - RBG Only <ColemanTeam-RBGOnly@rbgg.com>

Subject: RE: Coleman - Redactions to Golding Report

Lisa –

Since we've met and conferred, and can't reach an agreement as to filing a redacted version of the Golding documents, the Court's order envisions that the parties' will file statements as to why it can't be filed in redacted form. It doesn't require a joint statement. Defendants will file our statement by the 5 p.m. deadline.

Andy

From: Lisa Ells <LElls@rbgg.com>

Sent: Friday, October 12, 2018 5:12 PM

To: Andrew Gibson <Andrew.Gibson@doj.ca.gov>

Cc: Elise Thorn <Elise.Thorn@doj.ca.gov>; Coleman Team - RBG Only <ColemanTeam-RBGOnly@rbgg.com>

Subject: Re: Coleman - Redactions to Golding Report

Thanks Andy. Given that we have our positions staked out, we should file a joint brief with the court outlining our positions and telling her that we have prepared redactions consistent with each side and can promptly file whichever one she decides is appropriate upon her decision. I also think we should get that on file well in advance of her 5 PM deadline, as that is the deadline she wanted the report itself filed in redacted form. We will expect your portion of the joint statement first thing Monday morning.

Lisa Ells

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lells@rbgg.com

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On Oct 12, 2018, at 3:16 PM, Andrew Gibson <Andrew.Gibson@doj.ca.gov> wrote:

That's correct. We'll get authority for our position by Monday morning, as well.

From: Lisa Ells <LElls@rbgg.com>
Sent: Friday, October 12, 2018 3:02:15 PM
To: Andrew Gibson
Cc: Elise Thorn; Coleman Team - RBG Only
Subject: RE: Coleman - Redactions to Golding Report

To clarify, I understand from our meet and confer earlier that you are requesting that CDCR employee names and titles be redacted in addition to what is covered in the protective order. Let me know if that request has changed.

From: Lisa Ells
Sent: Friday, October 12, 2018 3:01 PM
To: Andrew Gibson <Andrew.Gibson@doj.ca.gov>
Cc: Elise Thorn <Elise.Thorn@doj.ca.gov>; Coleman Team - RBG Only <ColemanTeam-RBGOnly@rbgg.com>
Subject: RE: Coleman - Redactions to Golding Report

Andy,

I've told you our position on your additional proposed redactions and asked for authority, as we see nothing in the protective order or in the law that supports your request. I don't think we need to see your proposed redactions, just your legal basis for asking the Court or us to agree to them. When will you provide that?

As I indicated, our office is unfortunately shutting down in 1 minute through sometime Sunday night for our office move. We can get you the redactions with patient names and identifying info Monday morning.

Lisa

From: Andrew Gibson <Andrew.Gibson@doj.ca.gov>
Sent: Friday, October 12, 2018 2:00 PM
To: Lisa Ells <LElls@rbgg.com>
Cc: Elise Thorn <Elise.Thorn@doj.ca.gov>
Subject: Coleman - Redactions to Golding Report

Lisa -

How do you propose we submit the readacted report? I think it would be best for you to provide us with your proposed redactions and then we can do likewise on top of that and then if we can't reach an agreement, provide our separate arguments to the court regarding defendants' proposed redactions. If that's acceptable, when can you get us your redactions?

Thanks,

Andy

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