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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

**JOINT STATUS REPORT  
REGARDING FILING OF GOLDING  
REPORT WITH REDACTIONS**  
Judge: Hon. Kimberly J. Mueller

During the October 10, 2018 status conference and in its October 12, 2018 Order, this Court ordered the parties to meet and confer regarding publicly filing a redacted version of a report, and exhibits thereto, recently released by CDCR's Chief Psychiatrist, Dr. Michael Golding ("the Golding Report"). ECF No. 5949 at 3, 5. The Court further ordered that the parties file "an explanation why any part[y] believes the documents cannot be filed in redacted form" if an agreement could not be reached. *Id.* at 5. Although the parties met and conferred following the Court's order, including in person following the status conference, through numerous phone calls, and with exchanges of emails, the parties were unable to reach agreement regarding redaction of the Golding Report. The parties hereby submit their joint respective positions.

#### **I. Plaintiffs' Position**

The only information that must be redacted from the Golding Report are class members' names and identifying information, such as CDCR numbers or other unique identifiers such as case numbers. Such redactions are consistent with the Protective Order in this case, with the parties' long-standing practice of redacting or sealing class member identifying information (which, by definition, reveals confidential information about those individuals' mental health status and/or treatment), and with legal precedent. *See* ECF No. 2019.<sup>1</sup> Additional redactions are unnecessary and would undercut the strong public policy

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<sup>1</sup> Courts have appropriately sealed documents that "record ... medical and psychological examinations and diagnoses" under the governing Ninth Circuit standard, discussed below. *Jurgens v. Dubendorf*, No. 2:14-CV-2780-KJM-DAD, 2015 WL 6163464, at \*2 (E.D. Cal. Oct. 19, 2015); *see also Heilman v. Vojkufka*, No. CIV S-08-2788, 2011 WL 677877, at \*4 (E.D. Cal. Feb. 17, 2011), *report and recommendation adopted*, No. CIV S-08-2788 KJM, 2011 WL 3881023 (E.D. Cal. Sept. 2, 2011) (ordering documents taken from plaintiff prisoner's psychiatric records removed from court's electronic docket and filed under seal); *Karpenski v. Am. Gen. Life Companies, LLC*, No. 2:12-CV-01569-RSM, 2013 WL 5588312, at \*1 (W.D. Wash. Oct. 9, 2013) ("The need to protect medical privacy qualifies in general as a 'compelling reason.'"); *San Ramon Reg'l Med. Ctr., Inc. v. Principal Life Ins. Co.*, No. 10-02258, 2011 WL 89931, at \*1 n.1 (N.D. Cal. Jan. 10, 2011) (*sua sponte* sealing confidential medical records presented in the context of a motion to dismiss); *Eugene S. v. Horizon Blue Cross Blue Shield of N.J.*, 663 F.3d 1124, 1135-36 (10th Cir. 2011) (finding documents containing personal and private medical information present a real and substantial interest that justifies depriving the (footnote continued)

1 favoring access and disclosure of information in judicial proceedings. *Kamakana v. City*  
 2 *& Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006).

3 The Golding Report, as released to the parties, already redacted some but not all  
 4 class member identifying information. Plaintiffs prepared, and provided to Defendants, a  
 5 version of the Golding Report that redacts class members' names and identifying  
 6 information, as well as personal cell phone numbers belonging to CDCR employees. *See*  
 7 ECF No. 2833 at 7 (Three-Judge Court June 20, 2008 Order expanding Protective Order to  
 8 cover "personal telephone numbers").<sup>2</sup>

9 Until the afternoon of this filing, the parties agreed that a further-redacted version of  
 10 the Golding Report could be publicly filed, but disagreed as to the scope of appropriate  
 11 redactions. In addition to class member information, Defendants maintained that all  
 12 identifying information of any sort – including of any CDCR employee name, work email,  
 13 or title – should be redacted. Despite multiple requests for legal support or further  
 14 explanation for the basis for this position, and Defendants' promise to provide such  
 15 authority no later than the morning of this filing, Defendants still had not provided their  
 16 legal argument until after 4:25 p.m. today, just minutes before this Court's 5:00 p.m.

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17  
 18 public of access to the records and therefore may be filed under seal). As in *Jurgens*, here  
 19 "the public interest in disclosure of the medical records in question is outweighed by  
 [Plaintiffs'] privacy interests." 2015 WL 6163464, at \*2.

20 Arguments regarding the protection of mental health information are particularly  
 21 salient in the context of prisoners' information. Sensitive information pertaining to  
 22 Plaintiffs' mental and physical health could compromise their safety and well-being during  
 present or future incarceration. *See, e.g., Chandler v. Amsberry*, No. 3:08-CV-00962-SI,  
 2014 WL 1323048, at \*3 (D. Or. Mar. 28, 2014) (noting the vulnerabilities of "prisoners  
 with physical or mental disabilities" and "prisoners with known mental illness").

23 <sup>2</sup> In addition to the redactions, the exhibits to the report contain two changes from  
 24 the version submitted for *in camera* review on Tuesday, September 9, 2018. First, the  
 25 exhibits have been re-compiled into chronological order with lettered slip-sheets  
 26 identifying each exhibit's filename as provided to Plaintiffs. Second, Plaintiffs' September  
 27 9 submission inadvertently omitted a one-page exhibit titled "CHCF-2018-07-ASAS" that  
 Plaintiffs have now identified as Exhibit T, and in its place submitted a duplicate of the  
 one-page exhibit titled "2018-06-18-1359hrs" that is now identified as Exhibit S.  
 Plaintiffs' redacted report corrects this.

1 deadline for filing this Joint Statement. Additionally, at 1:00 p.m. today, Defendants  
 2 changed their previously disclosed position—they now argue that the Golding Report  
 3 should remain under seal in its entirety, rather than be redacted. *See* Decl. of Cara E.  
 4 Trapani at ¶¶ 4-5, filed herewith. Plaintiffs cannot meaningfully respond to Defendants’  
 5 new arguments within these time constraints. However, Plaintiffs make the following  
 6 general observations.

7 Pursuant to Local Rule 141, “[d]ocuments may only be sealed by written order of  
 8 the Court, upon the showing required by applicable law.” In addition, the Ninth Circuit  
 9 has a strong presumption in favor of public access to Court records. *See* Ninth Cir. Local  
 10 R. 27-13 (citing *The Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096  
 11 (9th Cir. 2016); *Oliner v. Kontrabecki*, 745 F.3d 1024, 1025-26 (9th Cir. 2014); *Seattle*  
 12 *Times v. U.S. Dist. Court of Western Washington*, 845 F.2d 1513, 1516 (9th Cir. 1988).)  
 13 In addition to meeting the compelling reasons or good cause standard, any request to seal  
 14 must be narrowly tailored, *Oliner*, 745 F.3d at 1026 (citations omitted); *Perry v.*  
 15 *Schwarzenegger*, 302 F. Supp. 3d 1047, 1053-54 (N.D. Cal. 2018), and therefore seek  
 16 sealing only of sealable information. This precludes, except in the rarest circumstances,  
 17 broad-brush requests that would seal entire documents. *See Oliner*, 745 F.3d at 1026 (“A  
 18 party who seeks to seal an *entire* [document] faces an even heavier burden.” (citation  
 19 omitted)); *cf.* Ninth Cir. Local R. 27-13(e) (“In addition, the motion shall request the least  
 20 restrictive scope of sealing and be limited in scope to only the specific documents or  
 21 portion of documents that merit sealing, for example, propose redaction of a single  
 22 paragraph or limit the request to a portion of a contract.”); N.D. Local R. 79-5(b)  
 23 (explaining that any request to seal “must be narrowly tailored to seek sealing only of  
 24 sealable material”). Defendants’ request here is vastly overbroad, seeking to seal large  
 25 swaths of information that must be left open to public scrutiny. This Court should permit  
 26 the filing of Plaintiffs’ redacted version of the Golding report, which Plaintiffs have  
 27 carefully reviewed to ensure only sealable information will be kept from the public.

28 With respect to Defendants’ alternative request to redact all identifying information

1 in the Golding Report, Defendants have provided no authority justifying their request to  
2 redact CDCR employee names and position titles from the Golding Report. Public policy  
3 favors access and disclosure of information in judicial proceedings, and this interest may  
4 be overcome only by “compelling reasons” that outweigh the right of public access and  
5 justify placing judicial records under seal. *Kamakana*, 447 F.3d at 1178-79. Moreover,  
6 redactions cannot be justified merely by identifying information to be redacted, without  
7 any “specific compelling reasons to justify these redactions.” *Id.* at 1183-84. “Simply  
8 mentioning a general category of privilege, without any further elaboration or any specific  
9 linkage with the documents, does not satisfy the burden.” *Id.* at 1184. But this is exactly  
10 what Defendants have done here—they have requested that the whole category of  
11 employee names and titles be redacted, without elaboration of any justification and without  
12 any explanation of why use of certain names and titles in the Golding Report raises any  
13 privacy concerns, much less compelling ones sufficient to overcome the presumption of  
14 public access. Without any such explanation, the Court cannot make any “good cause  
15 findings as to specific documents” as required to justify redaction of employee names and  
16 titles. *See id.* at 1183-84.

17 The operative January 2007 Protective Order in this case also does not support  
18 Defendants’ request to redact employee names and titles. *See* ECF No. 2019. Nor does  
19 the Three-Judge Court’s June 2008 expanded Protective Order. *See* ECF No. 2833. The  
20 January 2007 Protective Order does not list employee names and titles as protected  
21 information, and the June 2008 Order protects only “employee social security numbers,  
22 federal identification numbers, personal telephone numbers, addresses, or personal e:mail  
23 addresses.” *See* ECF No. 2833 at 7. However, that Order did not protect from disclosure  
24 employee names and titles, or those employees’ government contact information. The  
25 Golding Report contains some mobile phone numbers, but it does not contain social  
26 security numbers, federal identification numbers, or other personal numbers, addresses, or  
27 emails.

28 Finally, there is nothing about employee names and titles that intrinsically justifies

1 redaction, and in fact, these names and job titles provide highly relevant context that is  
2 critical to understanding the report's extremely serious assertions that go to the very heart  
3 of this litigation. Indeed, it would be impossible for Dr. Golding to testify as to the  
4 gravamen of his allegations at the upcoming hearing without referencing information that  
5 Defendants ask be redacted. "The mere fact that the production of records may lead to a  
6 litigant's embarrassment, incrimination, or exposure to further litigation will not, without  
7 more, compel the court to seal its records." *Kamakana*, 447 F.3d at 1179 (citation  
8 omitted). The names of all state employees are public as a matter of California state law  
9 and federal law. *Comm'n on Peace Officer Standards & Training v. Superior Court*, 165  
10 P.3d 462, 473 (Cal. 2007) (citing California Attorney General opinions regarding state law  
11 and 5 C.F.R. § 293.311 regarding federal law.) In California many state employees'  
12 names, job titles, and historical compensation are already publicly available at  
13 <https://transparentcalifornia.com/>, a searchable online database. To the extent any CDCR  
14 employee claims Dr. Golding has defamed or otherwise violated his or her rights in  
15 releasing his report, they have access to all available legal remedies should they be able to  
16 establish liability. Defendants have presented no justification for redaction of these  
17 particular names or titles within the context of the Golding Report, and this information is  
18 necessary to fully understand the report and exhibits in the context of this case. Plaintiffs  
19 therefore request to publicly file the Golding Report with redactions of only class member  
20 identifying information and CDCR employee mobile phone numbers.

## 21 **II. Defendants' Position**

22 On October 12, 2018, this Court ordered that the parties file a redacted version of  
23 materials authored by Dr. Michael Golding, Chief Psychiatrist for the California  
24 Department of Corrections and Rehabilitation (CDCR) (Golding Allegations), or explain  
25 why any party believes the Allegations cannot be filed in redacted form. (ECF No. 5949 at  
26 5.) The Golding Allegations should remain filed under seal pending the conclusion of an  
27 investigation into the merit of Dr. Golding's allegations. Filing the Golding Allegations in  
28 the public record, even if redacted, poses a significant risk of irreparable harm to



1 Defendants' ability to maintain a collaborative working relationship between staff within  
 2 the Mental Health Services Delivery System (MHSDS). A public filing also risks  
 3 compromising an independent investigation. Moreover, publishing the report on the  
 4 Court's public docket would be unfair to the individuals mentioned in the report. Dr.  
 5 Golding's assertions of wrongdoing have not been tested or proven, and the individuals  
 6 have had no opportunity to defend against being impugned in this way.

7 Alternatively, if despite the significant risk of harm the Court decides to  
 8 nevertheless file the Golding Allegations in the public record, the Court should accept  
 9 Defendants' proposed redactions to the Golding Allegations to protect the identities of  
 10 CDCR personnel and inmate-patients. The Allegations accuse CDCR employees of  
 11 engaging in wrongful behavior. These employees are identified by name and title, and the  
 12 Allegations disclose personal cellular telephone numbers and e-mail addresses. All such  
 13 identifying and personal information should remain confidential pending a full  
 14 investigation into Dr. Golding's allegations.

15 **A. Compelling Reasons Exist To Not Publicly Disclose The Golding**  
 16 **Allegations.**

17 While documents filed in civil cases are presumed to be available to the public, a  
 18 court may seal documents where compelling reasons outweigh the public's right of access.  
 19 *EEOC v. Erection Co.*, 900 F.2d 168, 170 (9th Cir. 1990). The court considers "the public  
 20 interest in understanding the judicial process and whether disclosure of the material could  
 21 result in improper use of the material for scandalous or libelous purposes or infringement  
 22 upon trade secrets." *Valley Broadcasting Co. v. U.S. District Court*, 798 F.2d 1289, 1294  
 23 (9th Cir. 1986). Compelling reasons include "when a court record might be used to  
 24 'gratify private spite or promote public scandal,' to circulate 'libelous' statements, or 'as  
 25 sources of business information that might harm a litigant's competitive standing.'" *Nixon*  
 26 *v. Warner's Commc'ns, Inc.*, 435 U.S. 589, 598-99 (1978); *see also United States v.*  
 27 *Amodeo*, 71 F.3d 1044, 1048-49 (2d Cir. 1995) ("Unlimited access to every item turned up  
 28 in the course of litigation would be unthinkable. Reputations would be impaired, personal

1 relationships ruined, and businesses destroyed on the basis of misleading or downright  
2 false information.”). Defendants meet this standard here.<sup>3</sup>

3 The Golding Allegations should be filed under seal because they contain unverified  
4 hearsay statements that will harm CDCR’s MHSDS. Even in redacted form, the Golding  
5 Allegations consist almost exclusively of unverified statements taken out of context that  
6 Dr. Golding uses to support his personal opinions about the construct of Defendants’  
7 MHSDS. The Golding Allegations contain serious accusations that attack both individuals  
8 and the Mental Health Services Delivery System. The public filing of the Golding  
9 Allegations or any portion of those Allegations, absent a full vetting of the factual basis for  
10 the statements in those Allegations attributed to third parties, would artificially give  
11 credence to Dr. Golding’s unverified statements and opinions. *See United States v.*  
12 *Amodeo*, 71 F.3d at 1048–49 (public release of unverified and possibly false allegations in  
13 court monitoring report would be abuse of discretion); *cf. United States v. Kwok Cheung*  
14 *Chow*, No. 14 CR00196 CRB JCS, 2015 WL 5094744, at \*4 (N.D. Cal. Aug. 28, 2015)  
15 (sealing wiretap information containing allegations against third parties, as “the release of  
16 certain information may have a disparaging effect on people who, having not been charged  
17 with any crime, have no formal opportunity clear their names”). The potential for the  
18 Golding Allegations to libel CDCR employees is a basis for the Court to retain the Golding  
19 Allegations *in camera* pending an investigation.

20 Moreover, the ramifications of the public release of the Golding Allegations,  
21 regardless of the extent of the redactions, are far-reaching and likely to destruct and harm  
22 the culture and working relationships within the institutions. The risk of harm extends to  
23 the relationship between psychologists and psychiatrists, and other members of the

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24  
25 <sup>3</sup> A request to seal must generally meet a lower “good cause” standard for materials  
26 filed in relation to non-dispositive motions or discovery as opposed to pleadings.  
27 *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). The  
28 compelling reasons supporting Defendant’s request that the Golding Allegations remain  
under seal establish good cause.



1 patients' treatment teams, by attacking the core values of the system, the organization of  
2 the system, and every clinician's professional and personal value and integrity. Dr.  
3 Golding is entitled to his opinions, but he is questioning a decades-old construct that is the  
4 product of litigation, thoughtful negotiation among the parties, and consistent monitoring.  
5 Indeed, many of Dr. Golding's allegations take aim at systems and procedures that are  
6 court-ordered and approved by the Special Master and Plaintiffs.

7 **B. If The Golding Allegations Must Be Filed, All Identifying Information**  
8 **Should Be Redacted.**

9 Plaintiffs already requested the Court file the Golding Allegations under seal  
10 because they contain "confidential class member information covered by the protective  
11 order in this case, as well as sensitive information detailing allegations of material  
12 misrepresentations of compliance data and information that could implicate the privacy  
13 rights of various CDCR employees quoted and discussed therein." (ECF No. 5937 at 2.)  
14 Defendants agree that the Golding Allegations should remain sealed based on the nature of  
15 the allegations and the privacy rights of the individuals quoted and discussed in the

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1 Golding Allegations. However, if the Court orders the Golding Allegations filed, then all  
2 identifying information for both CDCR employees and inmates should be redacted prior to  
3 filing, including but not exclusive to names, titles, emails, and telephone numbers.  
4 Defendants have prepared a redacted version of the Golding Allegations consistent with  
5 their position and will file it upon Court order.

6  
7  
8 DATED: October 15, 2018

Respectfully submitted,

9 ROSEN BIEN GALVAN & GRUNFELD LLP

10  
11 By: /s/ Cara E. Trapani  
12 Cara E. Trapani

13 Attorneys for Plaintiffs

14 DATED: October 15, 2018

Respectfully submitted,

15  
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