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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 RALPH COLEMAN, et al.,

11 Plaintiffs,

No. CIV S-90-0520 LKK JFM P

12 vs.

13 ARNOLD SCHWARZENEGGER,  
14 et al.,

15 Defendants.

ORDER

16 This matter came on for hearing on December 14, 2006 on the motion of Robert  
17 Hecker, et al. pursuant to Federal Rules of Civil Procedure 24(b) and 26(c) for permissive  
18 intervention in this action for the limited purpose of obtaining modification of the protective  
19 order filed herein on July 29, 1992, and for modification of said protective order.<sup>1</sup> Michael Bien,  
20 Esq. appeared as counsel for plaintiffs in this action and as counsel for moving parties Robert  
21 Hecker, et al. Lisa Tillman, Deputy Attorney General, and Paul Mello, Esq. appeared as counsel  
22 for defendants.

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25 <sup>1</sup> The moving parties are plaintiffs in another action pending in this court, Hecker v.  
26 California Department of Corrections and Rehabilitation, et al., Case No. CIV S-05-2441 LKK  
JFM P (hereafter "Hecker").

1 Federal Rule of Civil Procedure 24(b) “permits limited intervention” in an action  
 2 to seek modification of a protective order. Beckman Industries, Inc. v. International Ins. Co., 966  
 3 F.2d 470, 472-73 (9<sup>th</sup> Cir. 1992). In order to obtain permissive intervention in this action, the  
 4 Hecker plaintiffs must demonstrate that there is a nexus between this action and theirs that is  
 5 sufficient to satisfy the “commonality requirement” of Rule 24. Id. at 474.<sup>2</sup> Where, as here,  
 6 intervention is sought in order to seek modification of a protective order, that requirement is  
 7 satisfied on a showing of “the importance of access to documents prepared for similar litigation  
 8 involving the same parties.” Id. at 474. In addition, the court must “consider whether the  
 9 intervention will unduly delay or prejudice the adjudication of the rights of the original parties.”  
 10 Fed. R. Civ. P. 24(b).

11 The nexus between this action and Hecker is apparent. The plaintiffs in this  
 12 action (hereafter “the Coleman class”) are a class of “all inmates with serious mental disorders  
 13 who are now, or who will in the future be, confined within the California Department of  
 14 Corrections.” (See Order filed July 23, 1999.) For over ten years the parties in this action have  
 15 been working to remedy constitutional violations in the delivery of mental health services to class  
 16 members. The plaintiffs in Hecker are all members of the Coleman class. (See Ex. D to  
 17 Declaration of Michael W. Bien in Support of Notice of Motion and Motion by Robert Hecker, et  
 18 al. for Permissive Intervention and for Modification of Protective Order, filed November 9,  
 19 2006.) The Hecker plaintiffs allege various violations of their rights under the Rehabilitation Act  
 20 of 1973 and the Americans with Disabilities Act of 1990 as a result of their participation in the  
 21 California Department of Corrections and Rehabilitation’s mental health services delivery system  
 22 (See id.)

23 In addition, defendants in Hecker have recently moved to dismiss that action.  
 24 Several of the arguments advanced by the Hecker defendants in support of the motion to dismiss

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25 <sup>2</sup> Beckman also notes the requirement of “a timely motion.” Id. The timeliness of the  
 26 instant motion is not disputed.

1 are predicated on the relationship between that action and this one. (See Defendants'  
2 Memorandum of Points and Authorities in Support of Motion to Dismiss Plaintiffs' Complaint  
3 and Motion to Strike Allegations, filed November 17, 2006, in Hecker .<sup>3</sup>) Defendants'  
4 opposition to the instant motion is also grounded in the nexus between this action and the Hecker  
5 case. In particular, defendants contend that this action has a res judicata effect on the claims  
6 raised in Hecker, and that the Hecker plaintiffs, as members of the Coleman class, are bound by  
7 the orders in this action and should not be allowed to relitigate those orders in a new action.<sup>4</sup>

8 Defendants rest their opposition to the proposed intervention on assertions of  
9 prejudice that are not cognizable on this motion. Defendants' principal arguments are that the  
10 claims of the Hecker plaintiffs should have been litigated in Coleman and that litigation of those  
11 claims now will only serve to delay final resolution of the instant action. Those arguments miss  
12 the mark.

13 The Hecker plaintiffs request intervention in this action for a limited purpose: to  
14 seek modification of the protective order so that they will not have to serve on defendants in  
15 Hecker discovery requests seeking documents already provided to the Coleman class. Allowing  
16 the Hecker plaintiffs to intervene for that limited purpose will not delay this action at all, nor will  
17 the defendants suffer cognizable prejudice.<sup>5</sup> Whether or not the claims of the Hecker plaintiffs  
18 are barred by res judicata or otherwise subject to dismissal is separate from the question of  
19 whether there is a sufficient nexus between Hecker and the instant action to allow the Hecker  
20 plaintiffs to seek modification of the protective order in this case. This court finds the nexus  
21 between this action and Hecker satisfies the commonality requirement of Rule 24(b), and that

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22 <sup>3</sup> A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman,  
23 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

24 <sup>4</sup> As a corollary to this argument, defendants contend that resolution of the instant  
25 motion should await disposition of the motion to dismiss pending in Hecker.

26 <sup>5</sup> Indeed, it appears defendants will be spared the effort and expense of responding to  
requests for discovery they have already been provided.

1 allowing the Hecker plaintiffs to intervene in this action for the limited purpose of seeking  
2 modification of the protective order entered in this action will not cause undue delay or prejudice  
3 to defendants in this action. For these reasons, the Hecker plaintiffs' motion for permissive  
4 intervention will be granted.

5 Defendants also oppose modification of the protective order. Their main  
6 opposition appears to be that such modification will give the Hecker plaintiffs access to  
7 voluminous numbers of documents that have no relevance to the claims raised in Hecker.<sup>6</sup> While  
8 it is likely, if not certain, that there is material produced in discovery in Coleman that has no  
9 relevance to the claims raised in Hecker, defendants' argument goes to the admissibility of such  
10 documents in subsequent proceedings in Hecker, not to the wisdom of allowing counsel for the  
11 Hecker plaintiffs to review that material for its relevance to the claims raised in Hecker. The  
12 United States Court of Appeals for the Ninth Circuit "strongly favors access to discovery  
13 materials to meet the needs of parties engaged in collateral litigation." Foltz v. State Farm Mut.  
14 Auto. Ins. Co., 331 F.3d 1122, 1131 (9<sup>th</sup> Cir. 2003) (citing Beckman, 966 F.2d at 475.) The court  
15 noted that "[a]llowing the fruits of one litigation to facilitate preparation in other cases advances  
16 the interests of judicial economy by avoiding the wasteful duplication of discovery." Foltz, at  
17 1131. The record before this court shows that modification of the protective order is sought to,  
18 and will, serve this purpose. The motion will be granted.

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20 <sup>6</sup> Defendants also argue that they should not be required to produce documents provided  
21 by defendants who have been added to this action since the protective order was entered, and that  
22 they will have to engage in an unduly burdensome exercise of going through voluminous  
23 documents produced in this case to "determine those that are relevant and non-privileged for  
24 production." (Defendants' Opposition, filed December 1, 2006, at 12.) Both contentions are  
25 inapposite. The protective order in this action controls all documents produced in this case,  
26 without regard to the identity of the party that produced them; all parties are bound by its terms  
regardless of the date of their joinder in this action. Moreover, there is no document production  
request at issue before the court and the risk that defendants will be required to wade through  
volumes of documents is far higher in the absence of modification of the protective order; such  
modification will shift the burden of document review to counsel for the Hecker plaintiffs and  
will enable them to avoid discovery requests that duplicate those already responded to in this  
action.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. The November 9, 2006 motion of Robert Hecker, et al. for permissive  
3 intervention is granted;

4 2. The November 9, 2006 motion of Robert Hecker, et al. for modification of the  
5 protective order filed in this action on July 29, 1992 is granted; and

6 3. The protective order filed in this action on July 29, 1992 is modified in  
7 accordance with the order filed concurrently with this order.

8 DATED: January 11, 2007.

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11 UNITED STATES MAGISTRATE JUDGE  
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