

IN THE UNITED STATES DISTRICT COURTS
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al.,
Plaintiffs,
v.
ARNOLD SCHWARZENEGGER,
et al.,
Defendants.

NO. CIV S-90-0520 LKK JFM P
THREE-JUDGE COURT

MARCIANO PLATA, et al.,
Plaintiffs,
v.
ARNOLD SCHWARZENEGGER,
et al.,
Defendants.

NO. C01-1351 TEH
THREE-JUDGE COURT
ORDER

This matter came on for hearing on November 19, 2007 on various discovery disputes. Lori Rifkin, Esq. and Lisa Ells, Esq., appeared as counsel for plaintiffs. Lisa Tillman, Deputy Attorney General and Charles Antonen, Deputy Attorney General, appeared as counsel for defendants.

The first dispute concerns the adequacy of defendants' electronic search for documents responsive to plaintiffs' first and second requests for production of documents. At the hearing, defendants agreed to run an alternative search with search terms provided by plaintiffs in a sample set of custodians' databases from which defendants conducted their original search. To that end, the parties agreed that plaintiffs will provide to defendants, by

1 close of business on Tuesday, November 20, 2007, alternative search terms together with a
2 sample list of custodians' records to be searched. On or before the close of business on
3 Monday, November 26, 2007, defendants will provide a written report of the results of the
4 search to plaintiffs. A copy of said report shall also be submitted to the chambers of the
5 undersigned.

6 The second dispute concerns whether defendants should be required to search the
7 records of additional custodians for documents responsive to plaintiffs' second request for
8 production of documents. At the hearing, the parties represented to the court that they had
9 agreed to conduct an additional meet and confer with respect to this issue and to file a
10 stipulation by close of business on Tuesday, November 20, 2007. With that representation,
11 the second dispute was withdrawn.

12 The third dispute concerns the adequacy of defendants' efforts to obtain data from the
13 hard drives of six state officials¹ included on the list of 81 custodians whose databases were
14 searched for documents responsive to plaintiffs' document production requests. On October
15 30, 2007, defendants informed plaintiffs that these six individuals had separated from state
16 service and that their hard drives had been cleaned or could not be located. Plaintiffs sought
17 additional information from defendants, including the dates on which these individuals
18 separated from state service, relevant policies concerning recycling and reuse of computers
19 following state employees' separation from service, and other information concerning
20 defendants' efforts to locate the information stored on the hard drives used by these six
21 officials.

22 At the hearing, defendants provided to plaintiffs the dates on which each official
23 separated from state service. At the hearing, the parties agreed to meet and confer and, as
24 necessary, conduct additional discovery directed to this issue.

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27 ¹ The dispute originally included a seventh official, Bud Prunty. Defendants have
28 informed plaintiffs that Mr. Prunty's computer was transferred to his successor, David
Runnels, and that Mr. Runnels' computer has been imaged.

1 On November 1, 2007, this court directed defendants to submit to the court for
2 possible in camera review, if necessary, a copy of all documents for which defendants assert
3 a privilege. Said documents were to be submitted, as appropriate, each time defendants
4 served a privilege log on plaintiffs. To date, two privilege logs have been served on
5 plaintiffs. Defendants have not, however, submitted any documents for in camera review.
6 Good cause appearing, defendants, shall, by close of business on Tuesday, November 20,
7 2007, submit under seal for in camera review an electronic or a paper copy of every
8 document for which a privilege has been asserted to date. Except as set forth in footnote 2 of
9 this order, any future documents for which any party asserts a privilege shall be submitted
10 under seal within twenty-four hours of service of a privilege log.²

11 Plaintiffs take issue with defendants' claims of privilege. If these disputes are not
12 resolved,³ this court will hear argument on the matter on December 6, 2007 at 2:00 p.m.
13 Plaintiffs' moving papers shall be filed and served on or before November 30, 2007, and
14 defendants' opposition shall be filed and served on or before December 4, 2007.

15 IT IS SO ORDERED.

16 DATED: November 19, 2007.

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19 UNITED STATES MAGISTRATE JUDGE
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25 ² This order shall not apply to any document for which the party asserting the
26 privilege has been informed by plaintiffs' attorney that the claim of privilege as to that
27 document will not be contested by the opposing party.

28 ³ The parties shall notify the court by December 3, 2007 if no disputes remain in this
area.