

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

6
7 RALPH COLEMAN, et al.,
8 Plaintiffs,
9 v.
10 ARNOLD SCHWARZENEGGER,
11 et al.,
12 Defendants.

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

13 MARCIANO PLATA, et al.,
14 Plaintiffs,
15 v.
16 ARNOLD SCHWARZENEGGER,
17 et al.,
18 Defendants.

NO. C01-1351 TEH
THREE-JUDGE COURT
ORDER

20 Pursuant to court order, this matter came on for hearing on defendants' motion for
21 extension of time and status conference on discovery and related issues on January 29, 2008.
22 Michael Bien, Esq. and Lori Rifkin, Esq. appeared as counsel for plaintiffs. Paul Mello, Esq.
23 appeared as counsel for defendants in Plata. Rochelle East, Supervising Deputy Attorney
24 General, appeared as counsel for defendants in Coleman.

25 By order filed December 20, 2007, this court set a deadline of January 28, 2008 by
26 which defendants were to serve on plaintiffs their revised privilege logs and submit under
27 seal, for possible review, a copy of all documents described in the revised privilege logs. On
28 January 28, 2008, defendants filed and served a revised privilege log for electronic

1 documents and a revised privilege log for paper documents, and submitted documents
2 identified on the revised privilege logs to the court for possible in camera review. On the
3 same day, defendants filed a request for an extension of time to finalize their privilege log
4 and produce to plaintiffs any documents previously withheld on the basis of privilege.

5 Defendants seek an extension of time to review again approximately 11,000
6 documents for possible claims of privilege, to deliver documents to plaintiffs, and to revise
7 the January 28, 2008 privilege logs to correct errors in a small number of entries. Defendants
8 assert that the documents to be reviewed again are intermingled with 25,000 documents for
9 which a claim of privilege previously made has been withdrawn or is not being asserted,
10 thereby precluding timely delivery to plaintiffs of the latter documents. After consideration
11 of defendants' request and the arguments of counsel, in open court the court orally granted
12 defendants' request, as set forth in this order infra.¹

13 On January 25, 2008, defendants filed an application for a protective order.
14 Defendants seek a protective order to govern documents previously withheld on the basis of
15 privilege for which claims of privilege have been withdrawn or otherwise abandoned.
16 Defendants' proposed protective order is overbroad and inconsistent with controlling
17 precedent from the United States Court of Appeals for the Ninth Circuit. See, e.g., Foltz v.
18 State Farm Mut. Auto Ins. Co., 331 F.3d 1122 (9th Cir. 2003); see also Phillips ex rel.
19 Estates of Byrd v. General Motors, 307 F.3d 1206 (9th Cir. 2002). The court will issue a
20 protective order limiting to this three judge court proceeding use of all documents previously
21 withheld on the basis of privilege for which claims of privilege have been withdrawn or
22 otherwise abandoned.

23 In accordance with the above, and good cause appearing, IT IS HEREBY ORDERED
24 that:

25 1. Defendants' January 25, 2008 application for a protective order is denied;

27 ¹ All orders contained in this written order were announced to the parties in open
28 court at the hearing on January 29, 2008.

2. Defendants' January 28, 2008 request for extension of time is granted;

2 3. On or before February 4, 2008, defendants shall produce to plaintiff the
3 approximately 25,000 documents previously withheld on the basis of privilege for which
4 claims of privilege have been withdrawn or otherwise abandoned;

5 4. On or before February 4, 2008, defendants shall file and serve their corrected
6 January 28, 2008 privilege logs;

7 5. On or before February 15, 2008, defendants shall file and serve final privilege logs,
8 shall submit to this court for in camera review any additional documents for which a claim of
9 privilege is made; and shall produce to plaintiffs any additional documents previously
10 withheld on the basis of privilege for which claims of privilege have been withdrawn or
11 otherwise abandoned;

12 6. On or before February 20, 2008, the parties shall meet and confer, as appropriate,
13 concerning any disputes arising from defendants' revised privilege logs;

14 7. On or before February 25, 2008, the parties shall file either a joint statement
15 concerning disputes arising from the privilege logs, see Local Rule 37-251, or a joint
16 statement that no disputes remain.

17 || DATED: January 29, 2008.

John F. Walsh
UNITED STATES MAGISTRATE JUDGE