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3 IN THE UNITED STATES DISTRICT COURTS
4 FOR THE EASTERN DISTRICT OF CALIFORNIA
5 AND THE NORTHERN DISTRICT OF CALIFORNIA
6 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
7 PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE
8

9 RALPH COLEMAN, et al.,
10 Plaintiffs,
11 v.
12 ARNOLD SCHWARZENEGGER,
13 et al.,
14 Defendants.

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

15 MARCIANO PLATA, et al.,
16 Plaintiffs,
17 v.
18 ARNOLD SCHWARZENEGGER,
19 et al.,
20 Defendants.

NO. C01-1351 TEH
THREE-JUDGE COURT
ORDER DENYING COUNTY
INTERVENORS' MOTION TO
MODIFY FEBRUARY 8, 2008
ORDER

21
22 On March 10, 2008, the Counties of Santa Clara, Santa Barbara, San Mateo, Solano,
23 and Sonoma, including the Sonoma County Sheriff, District Attorney, and Chief Probation
24 Officer ("County Intervenors"), filed a motion to modify this Court's February 8, 2008 order.
25 The County Intervenors do not oppose the portions of the order consolidating trial, nor do
26 they oppose the provisions governing the involvement of intervenors' counsel during
27 discovery. Instead, they raise only two challenges to the portions of the February 8, 2008
28 order that govern the involvement of intervenors' counsel at trial and during motion practice:

1 first, that these provisions violate California law regarding the role of county counsel and,
2 second, that the County Intervenor's have distinct interests from other intervenors and
3 therefore cannot be represented by the same counsel.

4 The Court finds the County Intervenor's first argument to be without merit. Relying
5 on California Government Code sections 25203, 26526, 26529, the County Intervenor's
6 contend that they must be represented by county counsel because their respective boards of
7 supervisors have not authorized retention of outside counsel by a two-thirds majority vote.
8 However, the County Intervenor's failure to challenge the Court's orders limiting counsel's
9 participation during discovery implicitly concedes that state law is not violated by the
10 Court's limitations on the participation of intervenor's counsel. Litigation is not limited to
11 trial and motion practice; to the contrary, it also includes pretrial activities such as discovery.
12 Moreover, the Court's order merely requires county counsel to coordinate with counsel for
13 other intervenors to improve the efficiency of the proceedings before this Court; it does not
14 require the County Intervenor's to employ outside counsel, as contemplated by California
15 Government Code section 25203, nor does it eviscerate the role of county counsel as the
16 County Intervenor's legal advisors.

17 The Court does find some merit to the County Intervenor's second argument, but it
18 concludes that the County Intervenor's have failed to make the requisite showing that their
19 interests are so divergent from those of other intervenors that a modification of the Court's
20 February 8, 2008 order is necessary to ensure their effective representation. Accordingly, the
21 Court DENIES the County Intervenor's motion for modification WITHOUT PREJUDICE to
22 demonstrating that due process would be violated in a specific instance if separate counsel
23 were not allowed to participate at trial due to an actual and material conflict among
24 intervenors. The parties shall present in their joint pretrial conference statement any such
25 arguments for the need for separate counsel to participate at trial. These arguments shall be
26 tailored to individual witnesses, identify the asserted conflicts with specificity, and explain
27 why a due process violation would result if separate counsel were not allowed to question the
28 witness at trial.

1 Similarly, if an intervenor contends that due process requires that it be separately
2 represented during motion practice, then it shall seek leave of court to do so. For discovery
3 motions, the magistrate judge shall decide in the first instance whether leave shall be granted.
4 The arguments in the motion requesting leave must identify the asserted conflict with
5 specificity and explain why a due process violation would result if leave were not granted.

6 The Court finds that the above procedures most effectively balance the due process
7 rights of intervenors and the Court's right to manage its docket. Counsel are forewarned that
8 frivolous motions or requests for separate participation at trial or during motion practice will
9 not be tolerated and will be subject to sanctions.


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11 **IT IS SO ORDERED.**

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13 Dated: 03/18/08

/s/


STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

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17 Dated: 03/18/08



LAWRENCE K. KARLTON
SENIOR UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF CALIFORNIA

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19
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21 Dated: 03/18/08



THELTON E. HENDERSON
SENIOR UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA