

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

Pursuant to court order, this matter came on for discovery hearing by telephone conference on August 13, 2008. Maria Morris, Esq. and Lori Rifkin, Esq. participated as counsel for plaintiffs. Samantha Tama, Esq., Renju Jacob, Esq., Danielle O'Bannon, Deputy Attorney General, and Charles Antonen, Deputy Attorney General, participated as counsel for defendants.

On August 12, 2008, plaintiffs filed an ex parte application for an order shortening time for hearing on a motion for discovery sanctions. The motion for discovery sanctions raises two separate issues. The first concerns the format in which documents ordered produced by this court's April 14, 2008 and May 29, 2008 were produced to plaintiffs. The

1 second concerns claims of privilege raised in privilege logs served on June 10, 2008 and
2 August 5, 2008.

3 At the time of the telephonic hearing, the parties announced a tentative agreement for
4 briefing and hearing of the second issue, subject to approval by this court. The parties agree
5 that defendants' response to this aspect of plaintiffs' motion shall be filed and served on or
6 before 3:00 p.m. on Tuesday, August 19, 2008, and that the matter shall be heard on
7 Wednesday, August 20, 2008. That will be the order of the court. Plaintiffs' request to file a
8 supplemental brief by 3:00 p.m. on Tuesday, August 19, 2008, in the event that the parties'
9 meet and confer process narrows that dispute will be granted.

10 The court heard argument from the parties concerning the first issue. As noted above,
11 the documents in question were ordered produced by orders of this court filed April 14, 2008
12 and May 29, 2008. It is undisputed that defendants did not timely comply with those orders,
13 and that the documents were not produced to plaintiffs until August 11, 2008 at
14 approximately 11:50 a.m. The documents that are listed in Attachments A, B and C to this
15 court's April 14, 2008 order were provided to the court in paper format for in camera
16 review.¹ The documents listed in Attachments A and C shall forthwith be available to
17 plaintiffs' counsel for inspection and copying in the chambers of the undersigned. Counsel
18 may contact chambers to arrange for such inspection and copying. Counsel for defendants
19 may be present during said inspection and copying.

20 Defendants represent that the documents that were to be produced pursuant to this
21 court's May 29, 2008 order have been produced to plaintiffs in the same format that they
22 were produced to the court for in camera review. Defendants further represent that the
23 universe of documents presented to the court for in camera review exceeds the universe of
24 documents ordered produced pursuant to either order. Good cause appearing, the court will
25 hear further argument on Wednesday, August 20, 2008 on plaintiffs' motion for sanctions

26 ¹ These documents were initially presented for in camera review in an electronic
27 format. Thereafter, the court requested that defendants submit these documents in paper. The
28 court notes that defendants were able to comply with this request in a very short period of
time.

1 concerning the format in which the documents that were the subject of the May 29, 2008
2 order, with the exception of those documents identified in Attachment C to the court's April
3 14, 2008 order, were produced to plaintiffs. Defendants may, but are not required to, file a
4 responsive brief on this issue not later than 3:00 p.m. on Monday, August 18, 2008. The
5 parties may notify the court at any time up to and including the time set for hearing that they
6 have resolved this dispute.

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

8 1. Plaintiffs' August 12, 2008 application for order shortening time for hearing is
9 granted in part.

10 2. The documents listed in Attachments A and C to this court's April 14, 2008 order
11 shall forthwith be available to plaintiffs' counsel for inspection and copying in the chambers
12 of the undersigned. Counsel for plaintiffs may contact chambers to arrange for such
13 inspection and copying. Counsel for defendants may be present during said inspection and
14 copying.

15 3. On or before 3:00 p.m. on Tuesday, August 19, 2008, defendants shall file an
16 opposition to plaintiffs' motion for sanctions concerning claims of privilege raised in
17 privilege logs served June 10, 2008 and August 5, 2008.

18 4. On or before 3:00 p.m. on Tuesday, August 19, 2008, plaintiffs may file a
19 supplemental brief concerning their motion for sanctions concerning claims of privilege
20 raised in privilege logs served on June 10, 2008 and August 5, in the event that the parties'
21 meet and confer process narrows that dispute.

22 5. This matter is set for hearing on Wednesday, August 20, 2008 at 2:00 p.m. on
23 plaintiffs' motion for sanctions concerning claims of privilege raised in privilege logs served
24 June 10, 2008 and August 5, 2008 and for further hearing on plaintiffs' motion for sanctions
25 concerning the format in which the documents that were the subject of the May 29, 2008
26 order, with the exception of those documents identified in Attachment C to the court's April

27 /////
28

1 14, 2008 order, were produced to plaintiffs. Defendants may, but are not required to, file a
2 responsive brief on this issue not later than 3:00 p.m. on Monday, August 18, 2008.

3 Dated: August 14, 2008.

4
5 
6 UNITED STATES MAGISTRATE JUDGE
7

8 12
9 discovery28.o