

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 discovery hearing by telephone  
21 conference on August 13, 2008. Maria Morris, Esq. and Lori Rifkin, Esq. participated as  
22 counsel for plaintiffs. Samantha Tama, Esq., Renju Jacob, Esq., Danielle O'Bannon, Deputy  
23 Attorney General, and Charles Antonen, Deputy Attorney General, participated as counsel  
24 for defendants.

25 On August 12, 2008, plaintiffs filed an ex parte application for an order shortening  
26 time for hearing on a motion for discovery sanctions. The motion for discovery sanctions  
27 raises two separate issues. The first concerns the format in which documents ordered  
28 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.<sup>1</sup> 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

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26 <sup>1</sup> 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

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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.

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6 UNITED STATES MAGISTRATE JUDGE  
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