

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,
Plaintiffs,

v.

EDMUND G. BROWN, JR., et al.,
Defendants.

No. CIV. S-90-520 LKK/DAD (PC)

ORDER

Pursuant to court order, this matter was set for evidentiary hearing on September 26, 2013 on, *inter alia*, plaintiffs' motion for enforcement of court orders and affirmative relief related to use of force and disciplinary measures. By subsequent order, the start of the hearing was continued to October 1, 2013.

On September 12, 2013, defendants filed a motion in limine to exclude or limit presentation by plaintiffs of use of force videos at said hearing.¹ By order filed September 26, 2013, the court denied defendants' motion in limine insofar as it sought

¹ Use of force videos are made by defendants pursuant to state regulation and were made available to plaintiffs and their expert during prison tours. See Plfs.' Opp. to Defs.' MIL No. 6, filed September 19, 2013 (ECF No. 4820) at 2.

1 exclusion of the videos or their review in camera. Order filed
2 September 26, 2013 (ECF No. 4833) at 2. The order provides that
3 any video offered and accepted into evidence at the evidentiary
4 hearing will be shown in open court subject to a protective
5 order. The protective order provides, in relevant part, at
6 paragraph 2b. that "[a]ny member of the public or press who views
7 the videos is prohibited from publicly disclosing the names,
8 identification numbers, or other personally-identifying
9 information of any inmate or peace officer or other employee of
10 the California Department of Corrections and Rehabilitation
11 (CDCR) who may appear in any such video." Id. at 2-3. The
12 September 26, 2013 order was based on the court's determinations
13 that (1) the issues raised by plaintiffs' motion are of great
14 public interest and significance; and (2) the identity of
15 individuals depicted in the videos are irrelevant to the
16 proceedings and of no public interest and those individuals have
17 privacy interests otherwise protected by law. The September 26,
18 2013 order was entered to balance those interests.

19 On September 30, 2013, Los Angeles Times Communications LLC
20 (Los Angeles Times) filed a motion to intervene in this action in
21 order to seek modification of that part of the protective order
22 quoted *supra*, which the Los Angeles Times challenges as a prior
23 restraint in violation of the First Amendment. At the start of
24 the evidentiary hearing on October 1, 2013, the court granted the
25 motion to intervene in open court and heard argument on the
26 motion to modify the protective order, after which the court made
27 the oral ruling now reduced to writing herein.

1 There is no dispute that the videos depict members of the
2 plaintiff class, all of whom are seriously mentally ill. The
3 identities of class members have been protected by a protective
4 order since early in this action. See Order filed September 12,
5 1991 (Doc. No. 90).² Nor do the parties contend that the CDCR
6 employees depicted in these video recordings acted *ultra vires*;
7 rather, plaintiffs assert that these employees are carrying out
8 their duties in accordance with the policies and procedures
9 currently in effect. As such, the identities of the CDCR
10 employees and the class members depicted are completely
11 irrelevant to the court's consideration of this issues at bar.

12 After consideration of the arguments by counsel for the Los
13 Angeles Times and by counsel for plaintiffs and defendants, the
14 court entertained and granted from the bench a joint motion by
15 plaintiffs and defendants to strike any personally-identifying
16 information inadvertently shown during the playing of the videos
17 from the record of these proceedings. Such information is
18 irrelevant and will not be admitted into evidence in these
19 proceedings for any purpose.

20 In accordance with the above, the court hereby orders as
21 follows:

22 [1] Paragraph 2.b of the court's September 26, 2013 Order,
23 which provides, "Any member of the public or press who views
24 the videos is prohibited from publicly disclosing the names,
25 identification numbers, or other personally-identifying
26


27 ² The protective order has been modified several times. See,
28 e.g., Modified Protective Order filed January 12, 2007 (ECF No.
2109).

1 information of any inmate or any peace officer or other
2 employee of the California Department of Corrections and
3 Rehabilitation (CDCR) who may appear in any such video," is
4 VACATED.

5
6 [2] Any names, identification numbers, and other personally-
7 identifying information of any inmate and any peace officer
8 or other employee of the California Department of
9 Corrections and Rehabilitation who may appear in any video
10 shown during the evidentiary hearing is irrelevant to these
11 proceedings and will not be admitted into evidence for any
12 purpose. Any such personal information inadvertently shown
13 during the playing of these tapes is STRICKEN from the
14 record of these proceedings, and for that reason may not be
15 disclosed by members of the press or the public in
16 attendance upon penalty of contempt of court. This order has
17 no application to information obtained by the press or
18 public independently of these proceedings.

19 IT IS SO ORDERED.

20 DATED: October 7, 2013.

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24 LAWRENCE K. KARLTON
25 SENIOR JUDGE
26 UNITED STATES DISTRICT COURT
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