

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

11 RALPH COLEMAN, et al., No. CIV. S-90-520 LKK/DAD (PC)  
12 Plaintiffs,  
13 v. ORDER  
14 EDMUND G. BROWN, JR., et al.,  
15 Defendants.

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

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

26       1 Use of force videos are made by defendants pursuant to state  
27 regulation and were made available to plaintiffs and their expert  
28 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).<sup>2</sup> 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

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<sup>2</sup> The protective order has been modified several times. See,  
e.g., Modified Protective Order filed January 12, 2007 (ECF No.  
28 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.

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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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