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United States District Court,
E.D. California.

Ralph COLEMAN, et al., Plaintiffs,

v.

Arnold SCHWARZENEGGER, et al., Defendants.

No. CIV S-90-0520 LKK JFM P. | Jan. 12, 2007.

Attorneys and Law Firms

Michael Bien, Thomas Bengt Nolan, Rosen Bien and Asaro, Claudia B. Center, San Francisco, CA, Donald Specter, San Quentin, CA, for Plaintiffs.

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Opinion

ORDER

JOHN F. MOULDS, United States Magistrate Judge.

*1 This matter came on for hearing on December 14, 2006 on the motion of Robert Hecker, et al. pursuant to Federal Rules of Civil Procedure 24(b) and 26(c) for permissive intervention in this action for the limited purpose of obtaining modification of the protective order filed herein on July 29, 1992, and for modification of said protective order.¹ Michael Bien, Esq. appeared as counsel for plaintiffs in this action and as counsel for moving parties Robert Hecker, et al. Lisa Tillman, Deputy Attorney General, and Paul Mello, Esq. appeared as counsel for defendants.

Federal Rule of Civil Procedure 24(b) “permits limited intervention” in an action to seek modification of a protective order. *Beckman Industries, Inc. v. International Ins. Co.*, 966 F.2d 470, 472-73 (9th Cir.1992). In order to obtain permissive intervention in this action, the *Hecker* plaintiffs must demonstrate that there is a nexus between this action and theirs that is sufficient to satisfy the “commonality requirement” of Rule 24. *Id.* at 474.² Where, as here, intervention is sought in order to seek modification of a protective order, that requirement is satisfied on a showing of “the importance of access to documents prepared for similar litigation involving the

same parties.” *Id.* at 474. In addition, the court must “consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Fed.R.Civ.P. 24(b).

The nexus between this action and *Hecker* is apparent. The plaintiffs in this action (hereafter “the *Coleman* class”) are a class of “all inmates with serious mental disorders who are now, or who will in the future be, confined within the California Department of Corrections.” (*See* Order filed July 23, 1999.) For over ten years the parties in this action have been working to remedy constitutional violations in the delivery of mental health services to class members. The plaintiffs in *Hecker* are all members of the *Coleman* class. (*See* Ex. D to Declaration of Michael W. Bien in Support of Notice of Motion and Motion by Robert Hecker, et al. for Permissive Intervention and for Modification of Protective Order, filed November 9, 2006.) The *Hecker* plaintiffs allege various violations of their rights under the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as a result of their participation in the California Department of Corrections and Rehabilitation’s mental health services delivery system (*See id.*)

In addition, defendants in *Hecker* have recently moved to dismiss that action. Several of the arguments advanced by the *Hecker* defendants in support of the motion to dismiss are predicated on the relationship between that action and this one. (*See* Defendants’ Memorandum of Points and Authorities in Support of Motion to Dismiss Plaintiffs’ Complaint and Motion to Strike Allegations, filed November 17, 2006, in *Hecker*.³) Defendants’ opposition to the instant motion is also grounded in the nexus between this action and the *Hecker* case. In particular, defendants contend that this action has a res judicata effect on the claims raised in *Hecker*, and that the *Hecker* plaintiffs, as members of the *Coleman* class, are bound by the orders in this action and should not be allowed to relitigate those orders in a new action.⁴

*2 Defendants rest their opposition to the proposed intervention on assertions of prejudice that are not cognizable on this motion. Defendants’ principal arguments are that the claims of the *Hecker* plaintiffs should have been litigated in *Coleman* and that litigation of those claims now will only serve to delay final resolution of the instant action. Those arguments miss the mark.

The *Hecker* plaintiffs request intervention in this action for a limited purpose: to seek modification of the protective order so that they will not have to serve on defendants in *Hecker* discovery requests seeking documents already provided to the *Coleman* class.

Coleman v. Schwarzenegger, Not Reported in F.Supp.2d (2007)

Allowing the *Hecker* plaintiffs to intervene for that limited purpose will not delay this action at all, nor will the defendants suffer cognizable prejudice.⁵ Whether or not the claims of the *Hecker* plaintiffs are barred by res judicata or otherwise subject to dismissal is separate from the question of whether there is a sufficient nexus between *Hecker* and the instant action to allow the *Hecker* plaintiffs to seek modification of the protective order in this case. This court finds the nexus between this action and *Hecker* satisfies the commonality requirement of Rule 24(b), and that allowing the *Hecker* plaintiffs to intervene in this action for the limited purpose of seeking modification of the protective order entered in this action will not cause undue delay or prejudice to defendants in this action. For these reasons, the *Hecker* plaintiffs' motion for permissive intervention will be granted.

Defendants also oppose modification of the protective order. Their main opposition appears to be that such modification will give the *Hecker* plaintiffs access to voluminous numbers of documents that have no relevance to the claims raised in *Hecker*.⁶ While it is likely, if not certain, that there is material produced in discovery in *Coleman* that has no relevance to the claims raised in *Hecker*, defendants' argument goes to the admissibility of such documents in subsequent proceedings in *Hecker*, not to the wisdom of allowing counsel for the *Hecker* plaintiffs to review that material for its relevance to the claims raised in *Hecker*. The United States Court of

Appeals for the Ninth Circuit "strongly favors access to discovery materials to meet the needs of parties engaged in collateral litigation." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1131 (9th Cir.2003) (citing *Beckman*, 966 F.2d at 475.) The court noted that "[a]llowing the fruits of one litigation to facilitate preparation in other cases advances the interests of judicial economy by avoiding the wasteful duplication of discovery." *Foltz*, at 1131. The record before this court shows that modification of the protective order is sought to, and will, serve this purpose. The motion will be granted.

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

- *3 1. The November 9, 2006 motion of Robert Hecker, et al. for permissive intervention is granted;
2. The November 9, 2006 motion of Robert Hecker, et al. for modification of the protective order filed in this action on July 29, 1992 is granted; and
3. The protective order filed in this action on July 29, 1992 is modified in accordance with the order filed concurrently with this order.

Footnotes

- ¹ The moving parties are plaintiffs in another action pending in this court, *Hecker v. California Department of Corrections and Rehabilitation, et al.*, Case No. CIV S-05-2441 LKK JFM P (hereafter "*Hecker*").
- ² *Beckman* also notes the requirement of "a timely motion." *Id.* The timeliness of the instant motion is not disputed.
- ³ A court may take judicial notice of court records. *See MGIC Indem. Co. v. Weisman*, 803 F.2d 500, 505 (9th Cir.1986); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir.1980).
- ⁴ As a corollary to this argument, defendants contend that resolution of the instant motion should await disposition of the motion to dismiss pending in *Hecker*.
- ⁵ Indeed, it appears defendants will be spared the effort and expense of responding to requests for discovery they have already been provided.
- ⁶ Defendants also argue that they should not be required to produce documents provided by defendants who have been added to this action since the protective order was entered, and that they will have to engage in an unduly burdensome exercise of going through voluminous documents produced in this case to "determine those that are relevant and non-privileged for production." (Defendants' Opposition, filed December 1, 2006, at 12.) Both contentions are inapposite. The protective order in this action controls all documents produced in this case, without regard to the identity of the party that produced them; all parties are bound by its terms regardless of the date of their joinder in this action. Moreover, there is no document production request at issue before the court and the risk that defendants will be required to wade through volumes of documents is far higher in the absence of modification of the protective order; such modification will shift the burden of document review to counsel for the *Hecker* plaintiffs and will enable them to avoid discovery requests that duplicate those already responded to in this action.

