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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT HECKER, et al.,

Plaintiffs,

No. CIV S-05-2441 LKK JFM P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

\_\_\_\_\_ /  
Plaintiffs are state prisoners proceeding through counsel with a proposed class action raising claims under the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and California Government Code § 11135. This matter came on for hearing before the undersigned on February 8, 2006 on defendants' motion to dismiss and to strike allegations pursuant to Fed. R. Civ. P. 12(b)(1), (6) and 12(f).<sup>1</sup> Claudia Center, Esq. and Michael Bien, Esq.,

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<sup>1</sup> This action is proceeding on plaintiffs' second amended complaint, filed October 20, 2006. On November 17, 2006, defendants California Department of Corrections and Rehabilitation (CDCR), Schwarzenegger, Tilton, Woodford, Poulos and Dovey filed the instant motion. On November 27, 2006, defendants Hernandez, Wong, Malfi, Mendoza-Powers and Curry filed a motion to join in the motion to dismiss. On November 30, 2006, defendant Farber-Szekrenyi filed a motion to join in the motion to dismiss. Good cause appearing, the November 27, 2006 and November 30, 2006 motions to join in the November 17, 2006 motion are granted.

1 appeared as counsel for plaintiffs. Jay Craig Russell, Deputy Attorney General, and Kurt  
2 Franklin, Esq., appeared as counsel for defendants.

3 At issue is the extent of the relationship between the claims raised in the instant  
4 action and those litigated in the related class action, Coleman v. Schwarzenegger, Case No. CIV  
5 S-90-0520 LKK JFM P. The parties in the Coleman case have been working with a special  
6 master for over eleven years to remedy constitutional violations in the delivery of mental health  
7 care to seriously mentally ill inmates in the California Department of Corrections. Plaintiffs in  
8 the instant action raise claims which they contend have arisen as a consequence of the remedial  
9 efforts in the Coleman case. During the hearing, it became apparent that the interests of the  
10 parties and of judicial economy will be well-served by an assessment by the Coleman special  
11 master as to whether the claims raised in the instant action can be resolved within the remedial  
12 phase of the Coleman case. (See Transcript of Proceedings, February 8, 2007 Hearing re:  
13 Defendants' Motion to Dismiss, filed February 9, 2007, at 13-15.)

14 Good cause appearing, IT IS HEREBY ORDERED that the Clerk of the Court is  
15 directed to serve a copy of these findings and recommendations on the parties in Coleman v.  
16 Schwarzenegger, Case No. CIV S-90-0520 LKK JFM P and on the special master in the  
17 Coleman case; and

18 IT IS HEREBY RECOMMENDED that:

19 1. This matter be referred to the special master in Coleman v. Schwarzenegger,  
20 No. CIV S-90-0520 LKK JFM for a report and recommendation as to whether the claims raised  
21 herein can be resolved within the remedial phase of that action, said report to be filed within  
22 ninety days from the date of any order by the district court adopting these findings and  
23 recommendations; and

24 2. This matter be stayed until said report from the Coleman special master has  
25 been filed and considered by the district court.

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These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: February 26, 2007.

  
UNITED STATES MAGISTRATE JUDGE

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