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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA



S.A. THOMAS,)	Case No. CV 04-08448 DDP (SHx)
)	
Plaintiff,)	ORDER APPOINTING ACLU INTERIM
)	LEAD COUNSEL AND SETTING FURTHER
v.)	PROCEDURES
)	
LEROY BACA, MICHAEL)	[Ex Parte Application filed on
ANTONOVICH, YVONNE BURKE,)	December 4, 2008; Objection filed
DEANE DANA, DON KNABE,)	on December 8, 2008]
GLORIA MOLINA, ZEV)	
YAROSLAVSKY,)	
)	
Defendants.)	
)	

This matter came before the Court on numerous issues raised by counsel for the plaintiff class in the wake of the hearing on November 7, 2008. In response to those issues, the Court set a status conference. The Court has considered the representations and arguments raised by the parties in their papers and in the status conference. To resolve those various issues for the immediate future, and in the hopes of making settlement discussions between the parties possible, the Court orders as follows.

1. Interim Lead Counsel

The Court appoints the ACLU interim, sole lead counsel for the

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1 limited purpose of dealing with the legal and procedural issues
2 arising from the interlocutory appeal. The issue of lead counsel
3 in this case has been fully briefed, and has been pending since the
4 November 7, 2008 hearing. The Court has yet to rule on the issue
5 of lead counsel for the purposes of trial. The Court finds that
6 the ACLU is better qualified to serve as lead counsel with respect
7 to the legal and procedural issues raised by the petition for a
8 writ of certiorari and interlocutory appeal. Accordingly, the
9 Court appoints the ACLU as sole lead counsel on the issue of
10 subsequent filings to the Supreme Court. That status as sole lead
11 counsel will extinguish when the settlement conference begins in
12 this case.

13 **2. Settlement**

14 Once settlement negotiations begin in this case, Ms. Yagman
15 and the ACLU will be co-lead counsel for the purposes of attempting
16 to negotiate a settlement with the County. In the interest of
17 furthering a working relationship between co-lead counsel in this
18 case, Mr. Litt should not participate in the settlement conference.
19 The Court's order as to Mr. Litt is purely related to general
20 personality issues that have arisen; it in no way reflects an
21 acknowledgment by the Court that the ethical concerns Ms. Yagman
22 raised are valid. Settlement will proceed in front of Magistrate
23 Judge Carla Woehrle. If settlement talks before Judge Woehrle are
24 unsuccessful, and if all parties agree, the Court will participate
25 in subsequent settlement discussions at the parties' request. The
26 Court makes no ruling as to whether, should one of the co-lead
27 counsel object to a potential settlement reached between the other
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1 lead counsel and the Defendant, it would be appropriate for the
2 Court to approve that settlement.

3 **3. Further Briefing If Settlement Is Unsuccessful**

4 If settlement is unsuccessful, the parties will brief, in
5 accordance with a schedule to be set by the Court, the following
6 three issues:

7 (A) who should be lead trial counsel;

8 (B) whether this case will appropriately be structured as an
9 opt-in or opt-out case; and

10 (C) who will pay for the costs associated with notice,
11 possible special master, and other issues that will be part of the
12 resolution of this complex class action.

13 **4. The ACLU-County Agreement and Rutherford Order**

14 The Court makes this Order with the understanding from counsel
15 for Defendant that, in doing so, the ACLU's involvement with
16 respect to (1) interim lead counsel on the procedural and legal
17 issues associated with the writ of certiorari and (2) participation
18 in settlement discussions, will not be construed as a violation of
19 the agreement between the ACLU and the Sheriff with respect to
20 their ongoing relationship or the order outlining that relationship
21 in the related Rutherford case. The Sheriff's cooperation in this
22 limited respect is not a waiver of its objection to the ACLU's
23 participation as counsel in non-Rutherford litigation. If the
24 Court needs to address lead counsel issues in the future, the
25 Sheriff's objection may be raised at that point. Additionally, the
26 Court makes this Order with the understanding that the ACLU will

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1 not rely on the Sheriff's cooperation in this limited respect as
2 precedent that it is proper for the ACLU to act as counsel in jail
3 litigation in any other matter.

4 IT IS SO ORDERED.

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7 Dated: December 11, 2008



DEAN D. PREGERSON
United States District Judge

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