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6 Attorneys for Assembly Republican Intervenors:
California State Assemblymembers Todd Spitzer,
7 Chairman, Assembly Select Committee on Prison
Construction and Operations, Michael N. Villines,
8 Assembly Republican Leader, Anthony Adams, Greg
Aghazarian, Joes Anderson, John J. Benoit, Tom
9 Berryhill, Sam Blakeslee, Paul Cook, Chuck DeVore,
10 Michael D. Duvall, Bill Emmerson, Jean Fuller, Ted
Gaines, Martin Garrick, Shirley Horton, Guy S. Houston,
11 Bob Huff, Kevin Jeffries, Rick Keene, Doug La Malfa,
Bill Maze, Alan Nakanishi, Roger Niello, George A.
12 Plescia, Sharon Runner, Jim Silva, Cameron Smyth,
Audra Strickland, Van Tran and Mimi Walters

13 IN THE UNITED STATES DISTRICT COURTS
14 FOR THE EASTERN DISTRICT OF CALIFORNIA
15 AND THE NORTHERN DISTRICT OF CALIFORNIA
16 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

17 RALPH COLEMAN, et al.,
18 Plaintiffs,

19 v.

20 ARNOLD SCHWARZENEGGER, et al.,
21 Defendants.

Case No. CIV S-90-0520 LKK JFM P
THREE-JUDGE COURT

22 MARCIANO PLATA, et al.,
23 Plaintiffs,

24 v.

25 ARNOLD SCHWARZENEGGER, et al.,
26 Defendants.

Case No. C 01-cv-1351 TEH
THREE-JUDGE COURT

27 CALIFORNIA ASSEMBLYMEMBERS TODD
SPITZER, CHAIRMAN, ASSEMBLY SELECT
28 COMMITTEE ON PRISON CONSTRUCTION
AND OPERATIONS, MICHAEL N. VILLINES,
ASSEMBLY REPUBLICAN LEADER,
ANTHONY ADAMS, GREG AGHAZARIAN,
JOES ANDERSON, JOHN J. BENOIT, TOM
BERRYHILL, SAM BLAKESLEE, PAUL COOK,

**NOTICE OF MOTION AND
MOTION TO INTERVENE;
MEMORANDUM OF POINTS AND
AUTHORITIES; AND
DECLARATION OF CHAD A.
STEGEMAN**

1 CHUCK DEVORE, MICHAEL D. DUVALL,
2 BILL EMMERSON, JEAN FULLER, TED
3 GAINES, MARTIN GARRICK, SHIRLEY
4 HORTON, GUY S. HOUSTON, BOB HUFF,
5 KEVIN JEFFRIES, RICK KEENE, DOUG LA
6 MALFA, BILL MAZE, ALAN NAKANISHI,
7 ROGER NIELLO, GEORGE A. PLESCIA,
8 SHARON RUNNER, JIM SILVA, CAMERON
9 SMYTH, AUDRA STRICKLAND, VAN TRAN
10 AND MIMI WALTERS

Assembly Republican Intervenors.

8 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

9 **PLEASE TAKE NOTICE** that Pursuant to Rule 24 of the Federal Rules of Civil Procedure
10 and The Prison Litigation Reform Act, 18 U.S.C. § 3626, *et seq.* ("PLRA"), California
11 Assemblymembers Todd Spitzer, Chairman, Assembly Select Committee on Prison Construction and
12 Operations, Michael N. Villines, Assembly Republican Leader, Anthony Adams, Greg Aghazarian,
13 Joes Anderson, John J. Benoit, Tom Berryhill, Sam Blakeslee, Paul Cook, Chuck DeVore, Michael D.
14 Duvall, Bill Emmerson, Jean Fuller, Ted Gaines, Martin Garrick, Shirley Horton, Guy S. Houston, Bob
15 Huff, Kevin Jeffries, Rick Keene, Doug La Malfa, Bill Maze, Alan Nakanishi, Roger Niello, George A.
16 Plescia, Sharon Runner, Jim Silva, Cameron Smyth, Audra Strickland, Van Tran and Mimi Walters
17 (collectively the "Assembly Republican Intervenors") hereby respectfully move this Three Judge Court
18 for leave to intervene in the above-captioned matter in order to assert the defenses set forth in their
19 proposed Intervention Pleading, attached as Exhibit A to the Declaration of Chad A. Stegeman. No
20 hearing date has been set as counsel for the Assembly Republican Intervenors were instructed that the
21 Motion would be decided on the papers. *See* Declaration of Chad A. Stegeman at ¶ 2. The motion
22 should be granted because the Prison Litigation Reform Act, 18 U.S.C. § 3626, makes specific
23 provision for legislators to intervene in a case such as this where a panel has been convened to discuss
24 potential issuance of a prisoner release order. Furthermore, this Motion is timely because the panel
25 was just convened, no party will be prejudiced by the intervention, and there has been no delay in
26 seeking intervention.

1 This Motion is based upon this Notice of Motion, the Memorandum of Points and Authorities
2 and the Declaration of Chad Stegeman in support thereof, the documents and records on file with the
3 Court, and any other matter that the Court deems proper.

4 Dated: August 13, 2007

AKIN GUMP STRAUSS HAUER & FELD LLP

5
6
7 By /s/ Steven S. Kaufhold
8 Steve S. Kaufhold
9 Chad A. Stegeman
10 Attorneys for Assembly Republican Intervenors
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to Rule 24 of the Federal Rules of Civil Procedure and The Prison Litigation Reform
3 Act, 18 U.S.C. § 3626, *et seq.* (“PLRA”), California Assemblymembers Todd Spitzer, Chairman,
4 Assembly Select Committee on Prison Construction and Operations, Michael N. Villines, Assembly
5 Republican Leader, Anthony Adams, Greg Aghazarian, Joes Anderson, John J. Benoit, Tom Berryhill,
6 Sam Blakeslee, Paul Cook, Chuck DeVore, Michael D. Duvall, Bill Emmerson, Jean Fuller, Ted
7 Gaines, Martin Garrick, Shirley Horton, Guy S. Houston, Bob Huff, Kevin Jeffries, Rick Keene, Doug
8 La Malfa, Bill Maze, Alan Nakanishi, Roger Niello, George A. Plescia, Sharon Runner, Jim Silva,
9 Cameron Smyth, Audra Strickland, Van Tran and Mimi Walters (collectively the “Assembly
10 Republican Intervenors”) hereby respectfully move this Court for leave to intervene in the above-
11 captioned matter in order to assert the defenses set forth in their proposed Intervention Pleading,
12 attached as Exhibit A to the Declaration of Chad A. Stegeman.

13 **BACKGROUND**

14 On July 23, 2007, Judge Thelton Henderson of the United States District Court for the Northern
15 District of California, and Judge Lawrence Karlton of the United States District Court for the Eastern
16 District of California, issued orders pursuant to the PLRA to convene a three-judge judicial panel to
17 consider issuing prisoner release orders in *Marciano Plata, et al. v. Arnold Schwarzenegger, et. al.*,
18 Case No. C01-1351 TEH (N.D.C.A.), and *Ralph Coleman, et al. v. Arnold Schwarzenegger, et. al.*,
19 Case No. S-90-0520 LKK JFM (E.D.C.A.), respectively. For convenience and judicial economy, the
20 same panel will preside over both cases, both of which require the evaluation of overcrowding in
21 California’s prisons. The Chief Judge of the Ninth Circuit Court of Appeals, Mary Schroeder,
22 subsequently appointed Judge Henderson, Judge Karlton and Ninth Circuit Judge Stephen Reinhardt to
23 the panel (the “Three Judge Court”).

24 Before the creation of the Three Judge Court, the California legislature enacted Assembly Bill
25 900 (“AB 900”), which was intended to reduce the prison crowding that has prompted the *Plata* and
26 *Coleman* actions and to address Governor Schwarzenegger’s October 4, 2006 declaration of
27 emergency regarding overcrowding in California prisons. Specifically, AB 900, entitled the “Public
28 Safety and Offender Rehabilitation Services Act of 2007” authorized the Department of Corrections

1 and Rehabilitation to construct new and renovate old prison housing units in an effort to add tens of
2 thousands of new beds, improve medical, dental and mental health facilities and to guarantee higher
3 hygienic standards in existing facilities improving the overall health of present and future inmates and
4 appropriates approximately \$7.7 billion to accomplish these goals.

5 Counsel for the Assembly Republican Intervenors sought to ascertain whether the parties would
6 oppose this Motion to Intervene. The Attorney General's office did not intend to file an opposition.
7 However, at the time of filing this brief, counsel for the Plaintiffs had not indicated whether they would
8 oppose the intervention. See Declaration of Chad A. Stegeman at ¶ 1.

9 LEGAL DISCUSSION

10 **A. Legal Standard for Intervention**

11 Federal Rule of Civil Procedure 24 governs intervention in the federal courts. Specifically,
12 Rule 24(a) provides: "Intervention of Right. Upon timely application anyone shall be permitted to
13 intervene in an action: (1) when a statute of the United States confers an unconditional right to
14 intervene...."

15 Should a party meet the criteria established by Rule 24(a)(1), intervention is "absolute and
16 unconditional." See *Brotherhood of Railroad Trainmen v. Baltimore & O.R. Co., et. al.*, 331 U.S. 519,
17 531, 67 S.Ct. 1387, 1393 (1947). Rule 24(a)(1) "statutory intervenors" need not show inadequacy of
18 representation or that their interests may be impaired if not allowed to intervene. Cf. Fed.R.Civ.P.
19 24(a)(2) (absent statutory grant, intervention as of right requires showing of timeliness, interest in the
20 subject matter of the transaction, threat that interest may be impaired if not permitted to intervene, and
21 inadequacy of representation by existing parties). Under Rule 24(a)(1), "[o]nce it is clear that [the
22 statute applies], there is no room for the operation of a court's discretion." See *Brotherhood of*
23 *Railroad Trainmen*, 331 U.S. at 531, 67 S.Ct. at 1393.

25 **B. The PLRA Confers an Unconditional Right for the Assembly Republican Intervenors**

26 The PLRA expressly provides for standing for certain officials and units of government.
27 Specifically, 18 U.S.C. § 3626(a)(3)(F) provides:
28

1 Any State or local official including a legislator or unit of government whose
2 jurisdiction or function includes the appropriation of funds for the construction,
3 operation, or maintenance of prison facilities, or the prosecution or custody of persons
4 who may be released from, or not admitted to, a prison as a result of a prisoner release
5 order shall have standing to oppose the imposition or continuation in effect of such
6 relief and to seek termination of such relief, and shall have the right to intervene in any
7 proceeding relating to such relief.

8 The PLRA grants individual legislators the right to intervene in prison litigation as a legislators'
9 "jurisdiction or function" includes "appropriation of funds for the construction, operation, or
10 maintenance of prison facilities" within meaning of PLRA. *See, e.g., Ruiz v. Estelle*, 161 F.3d 814, 821
11 (5th Cir. 1998) ("Beyond doubt, the November 1997 amendment to the PLRA grants an unconditional
12 right to intervene to individual legislators."). Individual legislators have the right "to oppose the
13 imposition or continuation in effect of [a prison release order] and to seek termination of such relief."
14 18 U.S.C. § 3626(a)(3)(F).

15 The responsibilities and duties of the Assembly Republican Intervenors include "appropriation
16 of funds for the construction, operation, or maintenance of prison facilities." *See* Intervention Pleading
17 at ¶ 3. Furthermore, Judge Henderson's and Judge Karlton's July 23, 2007 Orders make it clear that
18 the Three Judge Court will specifically address whether to issue "prisoner release orders" as that term
19 is defined by the PLRA. Accordingly, this is exactly the situation for which the PLRA creates an
20 unconditional right for the Assembly Republican Intervenors to participate in this action.

21 **C. The Motion of the Assembly Republican Intervenors is Timely**

22 The final requirement for intervention under Rule 24(a) is that such application be timely made.
23 *See League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997). Timeliness is
24 evaluated based on a three factor test: "(1) the stage of the proceeding at which an applicant seeks to
25 intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *Id.*

1 (quoting *County of Orange v. Air California*, 799 F.2d 535, 537 (9th Cir. 1986)).¹ Each of the three
2 factors, as well as the language of the PLRA, supports a finding of timeliness here.

3 First, the Assembly Republican Intervenors seek to intervene at the outset of consideration by
4 the Three Judge Court of a prison release order and, indeed, within days of Judge Schroeder's Order
5 appointing the Three Judge Court. Intervention at this time will permit to Three Judge Court to have
6 the benefit of the evidence and arguments of the Assembly Republican Intervenors during its
7 consideration of what relief, if any, to order in this action.

8 Second, no party will be prejudiced by this intervention. The Assembly Republican Intervenors
9 do not seek to relitigate issues, rather, they seek participation in the proceedings before the Three Judge
10 Court created by the Courts' July 23, 2007 Orders, which will involve consideration by the Three
11 Judge Court of issues of profound importance to the people of California.²

12 Third, there has been no delay by the Assembly Republican Intervenors in the filing of this
13 motion which has been submitted within days of formation of Three Judge Court. Moreover, under the
14 express terms of the PLRA, this motion would be timely even if filed after the Three Judge Court had
15 already considered and ordered a form of relief because Congress specifically granted standing for
16 legislators not only to "oppose imposition" of such prison release orders, but also standing to ". . . seek
17 termination of such relief. . . ." 18 U.S.C. § 3626(a)(2)(F).

18 Finally, even if there were some issue regarding the timeliness of this intervention (and there is
19 not), the matters before the newly-created Three Judge Court raise "matters of broad social
20 significance," which, under the circumstances, militate in favor of a finding of timeliness. *See Doe v.*
21

22
23 ¹ The requirements of Rule 24, including "timeliness," are to be construed broadly in favor of
24 the party seeking intervention. *See Westlands Water Dist. v. United States*, 700 F.2d 561, 563 (9th Cir.
25 1983); *United States v. Union Elec. Co.*, 64 F.3d 1152, 1158 (8th Cir. 1995). Furthermore, courts are
26 more lenient in applying the timeliness requirement where intervention is sought as a matter "of right,"
27 than where it is merely "permissive." *See United States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984);
28 *Banco Popular de Puerto Rico v. Greenblatt*, 964 F.2d 1227, 1230, fn. 2 (1st Cir. 1992).

² Courts do not consider "whether the intervention itself will cause the nature, duration, or
disposition of the lawsuit to change." *United States v. Union Elec. Co.*, 64 F.3d 1152, 1159 (8th Cir.
1995); *Smith v. Marsh*, 194 F.3d 1045, 1051 (9th Cir. 1999); *Edwards v. City of Houston*, 78 F.3d 983,
1002 (5th Cir. 1996).

1 *Duncanville Ind. School Dist.*, 994 F.2d 160, 168 (5th Cir. 1993); *Banco Popular de Puerto Rico v.*
2 *Greenblatt*, 964 F.2d 1227, 1233 (1st Cir. 1992). This fact also weighs in favor of permitting the
3 requested intervention.

4 **CONCLUSION**

5 For all of these reasons, the Assembly Republican Intervenors respectfully request that this
6 Motion to Intervene be granted.

7 Dated: August 13, 2007

AKIN GUMP STRAUSS HAUER & FELD LLP

8
9
10 By /s/ Steven S. Kaufhold
 Steve S. Kaufhold
 Chad A. Stegeman
11 Attorneys for Assembly Republican Intervenors

DECLARATION OF CHAD STEGEMAN

I am a member in good standing of the California State Bar, and an associate of the law firm of Akin Gump Strauss Hauer & Feld LLP, attorneys for California State Assemblymembers Anthony Adams, Greg Aghazarian, Joes Anderson, John J. Benoit, Tom Berryhill, Sam Blakeslee, Paul Cook, Chuck DeVore, Michael D. Duvall, Bill Emmerson, Jean Fuller, Ted Gaines, Martin Garrick, Shirley Horton, Guy S. Houston, Bob Huff, Kevin Jeffries, Rick Keene, Doug La Malfa, Bill Maze, Alan Nakanishi, Roger Niello, George A. Plescia, Sharon Runner, Jim Silva, Cameron Smyth, Todd Spitzer, Audra Strickland, Van Tran, Michael N. Villines, and Mimi Walters (collectively the "Assembly Republican Intervenors"). I am admitted to practice in the United States District Court for the Northern District of California. I make this declaration in support of the Assembly Republican Intervenors' Motion to Intervene. I have personal knowledge of the facts set forth herein, and if called upon to do so, could and would testify competently thereto.

1. Before 10:00 a.m. on August 13, 2007, I contacted Plaintiffs' counsel Steven Fama at the Prison Law Office to discuss whether Plaintiffs would oppose this Motion to Intervene. At the time of filing this motion I had not received any communication back from the Prison Law Office. I also spoke with Frances Grunder, Senior Assistant Attorney General, Correctional Law Section, who indicated that the Attorney General's office did not plan to file an opposition to the Motion to Intervene.

2. On August 13, 2007, I contacted Rowina Espinoza, clerk to the Honorable Thelton Henderson, who indicated that a hearing date would not be necessary as the Motion to Intervene would be decided on the submissions by the parties. I also contacted Ana Rivas in the Honorable Lawrence Karlton's Chambers on the same date, who instructed me to follow the same procedure.

3. Pursuant to Federal Rule of Civil Procedure 24(c), I have attached as Exhibit A the Intervention Pleading that the Assembly Republican Intervenors intend to file in this matter.

I declare under the penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

August 13, 2007

/s/Chad A. Stegeman

Chad A. Stegeman

1 I, Steven S. Kaufhold am the ECF user whose ID and password are being used to file this Declaration
2 of Chad A. Stegeman. In compliance with General Order 45, X.B., I hereby attest that Chad A.
3 Stegeman has concurred in this filing.
4

5 DATED August 13, 2007

AKIN GUMP STRAUSS HAUER & FELD LLP

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7 By: s/Steven S. Kaufhold
8 Attorneys for Intervenors
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EXHIBIT A

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California Assemblymembers Todd Spitzer, Chairman,
7 Assembly Select Committee on Prison Construction and
Operations, Michael N. Villines, Assembly Republican
8 Leader, Anthony Adams, Greg Aghazarian, Joel
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10 Shirley Horton, Guy S. Houston, Bob Huff, Kevin
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11 Nakanishi, Roger Niello, George A. Plescia, Sharon
Runner, Jim Silva, Cameron Smyth, Audra Strickland,
12 Van Tran and Mimi Walters

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 MARCIANO PLATA, et al.,
17 Plaintiffs,
18
19 v.
20 ARNOLD SCHWARZENEGGER, et al.,
21 Defendants.

Case No. C 01-1351 TEH
INTERVENTION PLEADING

22 CALIFORNIA STATE
ASSEMBLYMEMBERS TODD SPITZER,
23 CHAIRMAN, ASSEMBLY SELECT
COMMITTEE ON PRISON
24 CONSTRUCTION AND OPERATIONS,
MICHAEL N. VILLINES, ASSEMBLY
25 REPUBLICAN LEADER, ANTHONY
ADAMS, GREG AGHAZARIAN, JOES
26 ANDERSON, JOHN J. BENOIT, TOM
BERRYHILL, SAM BLAKESLEE, PAUL
27 COOK, CHUCK DEVORE, MICHAEL D.
DUVALL, BILL EMMERSON, JEAN
28 FULLER, TED GAINES, MARTIN
GARRICK, SHIRLEY HORTON, GUY S.

1 HOUSTON, BOB HUFF, KEVIN
2 JEFFRIES, RICK KEENE, DOUG LA
3 MALFA, BILL MAZE, ALAN
4 NAKANISHI, ROGER NIELLO, GEORGE
5 A. PLESCIA, SHARON RUNNER, JIM
6 SILVA, CAMERON SMYTH, AUDRA
7 STRICKLAND, VAN TRAN AND MIMI
8 WALTERS

Intervenors.

8 For their Intervention Pleading, Intervenors California Assemblymembers Todd Spitzer,
9 Chairman, Assembly Select Committee on Prison Construction and Operations, Michael N. Villines,
10 Assembly Republican Leader, Anthony Adams, Greg Aghazarian, Joel Anderson, John J. Benoit, Tom
11 Berryhill, Sam Blakeslee, Paul Cook, Chuck DeVore, Michael D. Duvall, Bill Emmerson, Jean Fuller,
12 Ted Gaines, Martin Garrick, Shirley Horton, Guy S. Houston, Bob Huff, Kevin Jeffries, Rick Keene,
13 Doug La Malfa, Bill Maze, Alan Nakanishi, Roger Niello, George A. Plescia, Sharon Runner, Jim
14 Silva, Cameron Smyth, Audra Strickland, Van Tran, and Mimi Walters (collectively the "Assembly
15 Republican Intervenors") hereby allege as follows:

17 **ASSEMBLY REPUBLICAN INTERVENORS**

18
19 1. The Assembly Republican Intervenors are all duly-elected members of the California
20 Assembly, located at the State Capitol, Sacramento, California, 94249, and they collectively represent
21 millions of California citizens as constituents.

22 2. The Prison Litigation Reform Act, 18 U.S.C. §§ 3626 *et seq.*, specifically provides that
23 "Any State or local official including a legislator or unit of the government whose jurisdiction or
24 function includes the appropriation of funds for the construction, operation or maintenance of prison
25 facilities, or the prosecution or custody of persons who may be released from, or not admitted to, a
26 prison as a result of a prisoner release order shall have standing to oppose the imposition or
27
28

1 continuation in effect of such relief and to seek termination of such relief, and shall have the right to
2 intervene in any proceeding relating to such relief.”

3 3. The jurisdiction and function of the Assembly Republican Intervenors includes
4 consideration of the appropriation of funds for the construction, operation or maintenance of prison
5 facilities.
6

7 4. Indeed, the California Assembly, of which each of the Assembly Republican
8 Intervenors is a member, enacted the Public Safety and Offender Rehabilitation Services Act of 2007
9 (“AB 900”) on April 26, 2007 and it was signed into law on May 2, 2007. AB 900 represents a
10 comprehensive, bi-partisan effort to fund and improve the state prison system in California and
11 provides in excess of \$7 billion in funding to achieve that goal.
12

13 JURISDICTION AND VENUE

14 5. The Assembly Republican Intervenors’ defenses in this Intervention Pleading arise out
15 of the same transaction or occurrence that is the subject matter of the claims at issue in this action and,
16 specifically, out of the Prison Litigation Reform Act, 18 U.S.C. §§ 3626 *et seq.* This Court has
17 jurisdiction over the claims in this action as well as the Assembly Republican Intervenors’ defenses
18 pursuant to 28 U.S.C. §§1331.
19

20 6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391.

21 GENERAL ALLEGATIONS

22 7. On or about July 23, 2007, the Court issued its Order granting Plaintiffs motion to
23 convene a three-judge court pursuant to 18 U.S.C. §§ 3626(a)(3)(A). The Court specifically held that
24 “Accordingly, and because this Court finds that the conditions specified in 18 U.S.C. § 3626(a)(3)(A)
25 have been satisfied, IT IS HEREBY ORDERED that Plaintiffs’ motion to convene a three-judge court
26 to consider a prisoner release order is GRANTED.”
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1 8. In that Order, the Court specifically acknowledged the enactment of AB 900 and stated
2 that “. . . a prisoner release order would, indeed, be a radical step, particularly given the size of
3 California’s prison system.”

4 9. The Assembly Republican Intervenors agree that the imposition of a prisoner release
5 order would be a radical step and intervene in this action to oppose the imposition of any such order at
6 this time.

7
8 10. Federal Rule of Civil Procedure 24(c) requires that an intervening party, such as the
9 Assembly Republican Intervenors herein, provide a “pleading setting forth the claim or defense for
10 which intervention is sought.” Accordingly, the Assembly Republican Intervenors plead the following
11 defenses pursuant to the Prison Litigation Reform Act, 18 U.S.C. §3626, *et seq.*

12 **DEFENSES**

13 **(Prison Litigation Reform Act)**

14
15 11. These defenses arise under the Prison Litigation Reform Act, particularly 18 U.S.C.
16 §3626, *et seq.* Specifically, prison release orders are only permitted under very limited circumstances
17 where it is demonstrated – by clear and convincing evidence – that (i) crowding is the primary cause of
18 the violation of a Federal right; and (ii) no other relief will remedy the violation of the Federal right.

19 12. No showing has been made in this action sufficient to justify the imposition of a
20 prisoner release order under the Prison Litigation Reform Act. On the contrary, a prisoner release
21 order poses significant risk to public safety in California.

22
23 13. Moreover, the Assembly Republican Intervenors reserve their right to make an
24 affirmative showing that other relief, short of a prisoner release order, exists which could remedy the
25 current conditions specified by the Court.

26 **PRAYER FOR RELIEF**

27 **WHEREFORE**, the Assembly Republican Intervenors respectfully request that the Court:
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A. Enter no prisoner release order until AB 900 has been fully implemented and its efficacy can be fully and fairly assessed;

B. Enter no prisoner release order absent a sufficient evidentiary showing under the Prison Litigation Reform Act that such order is narrowly drawn, extends no further than necessary to correct a violation of a Federal right and is the least intrusive means necessary to correct any such violation;

C. Enter no prisoner release order absent a showing – by clear and convincing evidence – that (i) crowding is the primary cause of the violation of a Federal right; and (ii) no other relief will remedy the violation of the Federal right;

D. Enter no prisoner release order at this time in light of the adverse impact such order would have on public safety in California; and

E. Grant such further relief as the Court deems just and proper.

Dated: _____

AKIN GUMP STRAUSS HAUER & FELD LLP
Steven S. Kaufhold
Chad A. Stegeman

By _____
Steven S. Kaufhold
Attorneys for Assembly Republican Intervenors

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13 IN THE UNITED STATES DISTRICT COURTS
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ANTHONY ADAMS, GREG AGHAZARIAN,
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**[PROPOSED] ORDER GRANTING
ASSEMBLY REPUBLICAN
INTERVENORS' MOTION TO
INTERVENE**

**[PROPOSED] ORDER GRANTING ASSEMBLY
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1 CHUCK DEVORE, MICHAEL D. DUVALL,
2 BILL EMMERSON, JEAN FULLER, TED
3 GAINES, MARTIN GARRICK, SHIRLEY
4 HORTON, GUY S. HOUSTON, BOB HUFF,
5 KEVIN JEFFRIES, RICK KEENE, DOUG LA
6 MALFA, BILL MAZE, ALAN NAKANISHI,
7 ROGER NIELLO, GEORGE A. PLESCIA,
8 SHARON RUNNER, JIM SILVA, CAMERON
9 SMYTH, AUDRA STRICKLAND, VAN TRAN
10 AND MIMI WALTERS

Assembly Republican Intervenors.

11 Upon consideration of the submissions, pursuant to Rule 24(a)(1) of the Federal Rules of Civil
12 Procedure and The Prison Litigation Reform Act, 18 U.S.C. § 3626, *et seq.* ("PLRA"), the Motion to
13 Intervene on behalf of California Assemblymembers Todd Spitzer, Chairman, Assembly Select
14 Committee on Prison Construction and Operations, Michael N. Villines, Assembly Republican Leader,
15 Anthony Adams, Greg Aghazarian, Joes Anderson, John J. Benoit, Tom Berryhill, Sam Blakeslee, Paul
16 Cook, Chuck DeVore, Michael D. Duvall, Bill Emmerson, Jean Fuller, Ted Gaines, Martin Garrick,
17 Shirley Horton, Guy S. Houston, Bob Huff, Kevin Jeffries, Rick Keene, Doug La Malfa, Bill Maze,
18 Alan Nakanishi, Roger Niello, George A. Plescia, Sharon Runner, Jim Silva, Cameron Smyth, Audra
19 Strickland, Van Tran and Mimi Walters (collectively the "Assembly Republican Intervenors") is
20 GRANTED. The Assembly Republican Intervenors are directed to file their Intervention Pleading
21 within three days of the entry of this Order.

22 **IT IS SO ORDERED**

23 Dated: August __, 2007

THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

24 Dated: August __, 2007

LAWRENCE K. KARLTON
UNITED STATES CIRCUIT JUDGE
EASTERN DISTRICT OF CALIFORNIA

25 Dated: August __, 2007

STEPHEN REINHARDT
UNITED STATES DISTRICT JUDGE
NINTH CIRCUIT