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

15 RALPH COLEMAN, et al.,
16 Plaintiffs,
17 vs.
18 ARNOLD SCHWARZENEGGER, et al.,
19 Defendants

) No. Civ S 90-0520 LKK-JFM P
) **THREE-JUDGE COURT**
) **PLAINTIFFS' REPLY IN SUPPORT OF**
) **MOTION FOR AN ORDER REQUIRING**
) **DEFENDANTS TO DEMONSTRATE HOW**
) **THEY WILL ACHIEVE THE REQUIRED**
) **POPULATION REDUCTION BY JUNE 2013**

20 MARCIANO PLATA ,et al.,
21 Plaintiffs,
22 vs.
23 ARNOLD SCHWARZENEGGER, et al.,
24 Defendants

) No. C01-1351 TEH
) **THREE-JUDGE COURT**

1 The best data available shows that if Defendants make no changes to prison policy, they
2 will violate the order to reduce the prison population to 110,000 prisoners in June 2013.
3 Nonetheless, Defendants argue that they should not have to submit additional population
4 projections or updated plans. That contention should be rejected.

5 Defendants first argue that their current population projections are too “speculative” to
6 be reliable because they were made before the full effects of realignment had been calibrated,
7 and that more reliable data “will soon be available.” Opp. at 2-3. Rather than militating
8 *against* additional reporting, that fact suggests that further reporting would be useful.

9 Defendants informed the Court that they expect to finalize Spring 2012 Population
10 Projections in February 2012. Def’s Jan. 6, 2012 Status Report at 4. But while the Population
11 Projections provide data about the overall CDCR population, they do not specify projections
12 for the population of the 33 prisons covered by the order. Austin Decl., ¶4 and Table 1.
13 Accordingly, in the March 2012 status report Defendants should inform the Court whether they
14 project that they will achieve the required population in the 33 prisons by June 2013.¹

15 Defendants next argue that under the principle of “flexibility” they should only have to
16 provide data and plans to meet the next six-month benchmark, and not the final June 2013
17 benchmark. Opp. at 4. But requiring Defendants to plan to comply with the order in both the
18 short and long term does not infringe on their “flexibility.” To the contrary, the order upheld
19 by the Supreme Court requires Defendants to submit a two-year plan, with data and details
20 about “the effective dates of the various actions they propose to undertake and their estimate of
21 the reduction in population they expect to achieve after six, twelve, eighteen, and twenty-four
22 months.” Aug. 4, 2009 Order at 183.

23 When Defendants submitted a plan that did not meet this requirement, the Court ordered
24 them to submit a new plan with even more detailed data. Oct. 21, 2009, Order at 2-5. It also
25 stated that if the State’s new plan does not achieve the full two-year crowding reduction, the
26 Court would take further action: “Should the state again fail to submit a population reduction
27

28 ¹ Plaintiffs seek an order requiring projections for the overall population of the 33 prisons, not separate projections for the population of each prison.

1 plan that complies with our August 4, 2009 Opinion and Order, the court will be left with no
2 alternative but to develop a plan independently and order it implemented forthwith.” *Id.* at 6.

3 Defendants’ November 2009 plan complied with the Court’s order. But Defendants
4 have replaced that compliant plan with an approach – prison realignment – that according to
5 current projections *will not* comply with the order. The Court gave Defendants the flexibility
6 to develop their own plan for reducing the prison population, and to change that plan as
7 appropriate. However, that flexibility does not include adopting a plan that will violate the
8 order. Defendants should be required to submit a report describing what steps they plan to take
9 to comply with the order, including additional population reduction measures if necessary.

10 Defendants assert that they should not have to plan now for full compliance because
11 they may ask the Court to modify the population reduction order. *Opp.* at 5. But unless and
12 until the Court modifies its order, Defendants must plan to fully comply. While there have
13 been some improvements, overcrowded conditions persist in many prisons, the constitutional
14 violations continue, and *Plata* and *Coleman* Plaintiffs continue to suffer from grossly
15 inadequate care. Indeed, Defendants do not even attempt to make the showing necessary to
16 warrant a modification of the order.

17 Nor is there any indication that Defendants intend to take steps to avert the predicted
18 default absent court order. Defendants state that they will consider taking action only if they
19 “anticipate that they will not meet the *current* benchmark.” *Opp.* at 4 (emphasis added). That
20 may come too late. Defendants have a long and well-documented record of moving too slowly
21 to stem the overcrowding crisis. They have proven that it takes time to develop and implement
22 effective population reduction measures. They must act now to avoid a default in June 2013.

23
24 Dated: February 28, 2012

25 Respectfully submitted,

26 /s/ Rebekah Evenson

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