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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 v.
18 **EDMUND G. BROWN JR., et al.,**
19 Defendants.
20

2:90-cv-00520 LKK JFM P
THREE-JUDGE COURT

21 **MARCIANO PLATA, et al.,**
22 Plaintiffs,
23 v.
24 **EDMUND G. BROWN JR., et al.,**
25 Defendants.
26

C01-1351 TEH
THREE-JUDGE COURT
**DEFENDANTS' RESPONSE TO JUNE 7,
2012 ORDER REQUIRING FURTHER
BRIEFING**

1 **I. INTRODUCTION.**

2 The difference between the prison health care system that exists today and the one that
3 existed in 2006 when Plaintiffs moved to convene the three-judge panel is like night and day.
4 Since 2006, significant accomplishments have transformed the system, and progress continues to
5 be made. Moreover, the prison population has dropped by more than 40,000 inmates since that
6 time. In fact, the population has shrunk by nearly 23,000 inmates just since last October when the
7 state's new public safety realignment went into effect. In addition, the state is building new and
8 improved health care facilities for inmates needing acute and long-term health care.

9 The state's current projections indicate that in June 2013, the prison population will be
10 just 2,955 inmates over the final benchmark of 137.5% of design bed capacity, which equates to
11 about 141%.¹ The population is projected to reach 145% by this December. With all of the
12 improvements to the health care system, Defendants are confident that once the population
13 density reaches 145%, they will be able to demonstrate that the prison population does not
14 prohibit them from providing constitutionally adequate medical and mental health care.
15 Accordingly, in early 2013, Defendants intend to move for modification of the final benchmark
16 from 137.5% to 145%.

17 Plaintiffs overstate the complexity of the modification motion, as well as the time needed
18 for it to be briefed and presented to the Court. The motion will simply present the issue of
19 whether a population density of 145% prohibits Defendants from providing constitutionally
20 adequate care. It will not be necessary, in Defendants' modification motion, to decide whether all
21 aspects of prison health care are constitutionally adequate. Indeed, some areas of the system that
22 are still being improved upon may be unaffected by the population density. So long as a
23 population density of 145% does not prohibit completion of any such improvements, the fact that
24 some areas are still being improved upon would not be reason to deny the motion.

25 The Court would likely benefit from receiving expert testimony from a qualified health
26 professional with expertise in administering a prison health care system. As Defendants propose

27
28 ¹ For brevity, all percentages refer to prison design bed capacity.

1 in this response, two months should be more than enough time to accommodate this expert
2 review, including any related expert discovery.

3 It does not make sense for expert inspections to begin until the population has actually
4 dropped to the level that will be targeted in the modification motion. For that reason, Defendants
5 propose that the expert review occur between late December and the end of February, and that
6 Defendants file their modification motion by the end of March with a May 10, 2013 hearing.
7 Defendants are confident that once the population drops to 145%, the Court will agree that
8 modification of the final benchmark is warranted. The possibility that the motion could be denied
9 should not be reason for undue concern given the tremendous systemic improvements that have
10 been made, the shrinking prison population, and the fact the projected shortfall for the June 2013
11 benchmark is expected to be less than 3,000 inmates. Defendants are committed to complying
12 with the population-reduction order. If, for some reason, the modification motion is denied, a six
13 to twelve month extension of the final benchmark date would be appropriate to allow compliance.

14 **II. IT WOULD BE PREMATURE TO COMMENCE PROCEEDINGS RELATED TO THE MOTION TO**
15 **MODIFY UNTIL THE PRISON POPULATION REACHES 145% IN DECEMBER 2012.**

16 Once the prison population reaches 145% in December, Defendants are confident they
17 will demonstrate that the population density does not prohibit them from providing inmates with
18 constitutionally sufficient medical and mental health care. (*See* 5/7/12 Hoshino Decl., Ex. 2,
19 Appx. G [“Baseline Gap Chart” projecting that the population will be reduced to 145.1% of
20 design bed capacity by 12/27/12].) But Defendants can make this showing only when the
21 evidence is available, *i.e.*, once medical and mental health care being provided is at or below
22 145%. Conditions are changing rapidly in the state’s 33 adult institutions based on the dramatic
23 population reduction. A motion, investigation, or discovery based on current conditions, or
24 conditions existing at any population density greater than 145%, would require the parties to
25 introduce irrelevant evidence and speculate about conditions that will exist at a lower population
26 density in the future. Any such evidence would be inferior to evidence stemming from the system
27 once the 145% level is achieved in December.
28

1 In addition, circumstances could change that would render the motion unnecessary.
 2 Defendants achieved the Court’s first population benchmark on time, the second benchmark two
 3 months early, and project they will reach the next benchmark before December 27, 2012. By
 4 December, it may be clear that the population is, in fact, shrinking faster than projected, which
 5 would allow Defendants to achieve compliance with the final June 2013 benchmark without
 6 modification. Similarly, by December, any gap compared to the final benchmark and the overall
 7 population reduction may be so small that it would fall within the range of substantial
 8 compliance. Under either scenario, a modification motion would not be warranted, and the
 9 parties should not be required to expend their time and resources on discovery and briefing the
 10 motion. Accordingly, scheduling proceedings on the motion before December would be
 11 premature.

12 **III. MODIFICATION PROCEEDINGS INVOLVING LIMITED EXPERT DISCOVERY SHOULD**
 13 **COMMENCE IN LATE DECEMBER 2012 AND BE COMPLETED IN MAY 2013.**

14 The issue to be decided on the contemplated motion to modify is whether a population
 15 density of 145% prohibits Defendants from providing constitutionally adequate medical and
 16 mental health care to inmates. Although some factual investigation and expert discovery may be
 17 necessary, there is no basis for Plaintiffs’ counsel’s claim that it will be “significant.” Defendants
 18 anticipate that they will need one expert with expertise in administering a prison health care
 19 system to conduct a limited investigation and opine whether the population density of 145%
 20 prohibits the provision of constitutionally adequate health care. Two months should be more than
 21 enough time to accommodate the necessary expert review and discovery.

22 Defendants propose the following schedule for proceedings on the motion:

<u>Event</u>	<u>Date</u>
Expert investigation/discovery:	December 28, 2012 – February 28, 2013
Last day for Defendants to file motion to modify:	March 29, 2013
Last day for Plaintiffs’ counsel to file opposition:	April 15, 2013
Last day for Defendants to file reply:	April 29, 2013
Hearing:	May 10, 2013

1 If for some reason the motion is denied, an extension of six to twelve months would be
2 warranted to comply with the final benchmark. Defendants have fully and expeditiously
3 implemented their population-reduction plan, which resulted in a dramatic population reduction.
4 This is precisely the type of precondition which the Supreme Court stated would support a request
5 for an extension of time to comply with the final benchmark. *See Plata*, 131 S. Ct. at 1947.²

6 **IV. CONCLUSION.**

7 Proceedings related to a motion to modify are premature until Defendants have reduced the
8 in-state prison population to 145%. It would therefore be appropriate for the Court to once again
9 deny the motion without prejudice and continue to evaluate the historic population reduction.
10 Once the population is reduced to 145%, proceedings on the motion can commence, if necessary,
11 to allow for a hearing on the motion in May 2013.

12 Dated: June 22, 2012

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15 Dated: June 22, 2012

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28 ² Defendants' counsel presented their proposal to Plaintiffs' counsel on June 13, 2012, but both counsel were unable to agree on either an approach or a schedule.