

Plata v. Davis



PC-CA-018-001

COPY

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FILED

JUN 20 2002

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13

14 MARCIANO PLATA, et al.,

15 Plaintiffs,

16 v.

17 GRAY DAVIS, et al.,

18 Defendants.
 19

No. C-01-1351 TEH

~~PROPOSED~~ ORDER ADOPTING
 CLASS ACTION STIPULATION AS
 FAIR, REASONABLE AND
 ADEQUATE

20 This matter came for hearing on June 13, 2002, to determine whether the
 21 proposed stipulation settling the injunctive relief in this case is fair, reasonable, and
 22 adequate to the class under Federal Rule of Civil Procedure 23(e). Plaintiffs were
 23 represented by Donald Specter and Steven Fama of the Prison Law Office. Defendants
 24 were represented by John M. Appelbaum, Supervising Deputy Attorney General.

25 The Court hereby FINDS as follows:

26 The class received adequate notice of the proposed stipulation. The class
 27 received notice from April 17, 2002 to May 28, 2002. Notice was posted in the housing
 28 units, and copies were distributed to inmates on lock down, in security housing units, in

1 orientation units, and in infirmaries. Notice was also furnished for inmates with
2 disabilities. The notice contained a summary of the proposed medical improvements to
3 assist inmates. Copies of the proposed stipulation and the attached policies and
4 procedures were available to inmates in the law libraries.

5 The Court independently reviewed the stipulation and policies and
6 procedures, as well as the comments received, plaintiffs' and defendants' responses to the
7 comments, and the comments and testimony provided at the hearing. Most comments
8 concerned specific aspects of the medical policies, which the parties adequately
9 responded to by: (1) referencing certain policies and procedures that address particular
10 concerns raised by the comments; (2) explaining that the stipulation provides for
11 modification of those policies if necessary to provide for constitutionally adequate care;;
12 and (3) showing that the policies and procedures as written provide for a medical care
13 delivery system designed to minimize the risk of harm to inmates.

14 Other comments stated that the phase-in or roll-out period provided for in the
15 stipulation was unfair. However, this provision is not unfair given the settlement as a
16 whole, and because: (1) certain improvements must be made at all named prisons starting
17 January 1, 2003; (2) Court-ordered relief of the kind required by the Stipulation would
18 not have been possible until after a trial and decision, a process would have taken several
19 years and required plaintiffs to risk an adverse decision at trial or on appeal; and (3) the
20 size and scope of the improvements do not make simultaneous implementation feasible.

21 After considering the evidence and the settlement as a whole, the Court hereby
22 finds that the stipulation is fair, reasonable and adequate. The stipulation requires
23 systemic improvements in the delivery of medical care at the named facilities, and
24 provides for monitoring by the California Department of Corrections, plaintiffs and
25 independent court experts, with the Court retaining jurisdiction to enforce its terms if
26 necessary.

27 The Court further finds that the stipulation meets the requirements of 18
28 U.S.C. § 3626(a)(1) because the relief narrowly drawn, extends no further than necessary

1 to correct the violation of a Federal right, and is the least intrusive means necessary to
2 correct the violation of the Federal right.

3 The Court hereby adopts the stipulation as the order of this Court.

4 The parties are directed to meet and confer regarding: (1) the contents of a
5 notice to the plaintiff class regarding approval of the settlement, and the timing and
6 manner by which such notice will be provided; and (2) the content and filing of a
7 proposed order providing for the establishment of an escrow account to be administered
8 by the Court for the purpose of paying the independent Court experts.

9 IT IS SO ORDERED.

10
11 DATED: 6/20/02

THELTON E. HENDERSON

THELTON E. HENDERSON
United States District Judge

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15 Approved as to form:

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17 DATED: 6/19/02

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28
STEVEN FAMA
Attorney for Plaintiffs

Plata - Fairness Order Version 3.wpd

DECLARATION OF SERVICE

Case Name: *Marciano Plata, et al. v. Gray Davis, et al.*

No. USDC-ND No. C-01-1351 THE

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the Bar of this Court at which member's direction this service is made. I am familiar with the business practices at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

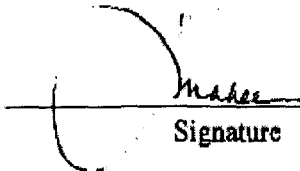
On June 19, 2002, I placed the attached

[PROPOSED] ORDER ADOPTING CLASS ACTION STIPULATION
AS FAIR, REASONABLE AND ADEQUATE

in the internal mail collection system at the Office of the Attorney General, 455 Golden Gate Avenue #11000, San Francisco, California 94102, for deposit in the United States Postal Service that same day in the ordinary course of business, in a sealed envelope, postage fully postpaid, addressed as follows:

DONALD SPECTER STEVE FAMA Prison Law Office General Delivery San Quentin, CA 94964-0001	CAROLINE MITCHELL Pillsbury Winthrop 50 Fremont Street San Francisco, CA 94105
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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 19, 2002 at San Francisco, California.

J. Maher
Signature

C. Mitchell
RECEIVED
 MAY 22 2002
 FILED

2002 MAY 21 AM 9:53

RICHARD W. HICKING
 CLERK
 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CA

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

MARCIANO PLATA, et al.,
 Plaintiffs,

v.

NO. C01-1351 TEH

GRAY DAVIS, et al.,
 Defendants.

ORDER

This matter came before the Court on Monday, April 29, 2002, on Defendants' Motion to Exclude Previously Litigated and Remediated Institutions Central California Women's Facility and California Institution for Women. Specifically, defendants seek to exclude inmates at these two women's prisons from the class because they were the subject of a prior class action concerning inadequate medical care. Having carefully considered the parties' written and oral arguments, and the record herein, the Court concludes that the motion should be denied for the reasons set forth below.

I. BACKGROUND

On January 28, 2002, the parties filed a comprehensive stipulation resolving the injunctive relief portion of this action. As part of that stipulation, the parties agreed to the following with respect to the definition of the class:

The parties agree that this action shall be maintained as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure and that the class consists of all prisoners in the custody of the CDC [California Department of Corrections] with serious medical needs, except those incarcerated at Pelican Bay State Prison.

1 Pls' Exh. 1, ¶ 8 (emphasis added). The stipulation further provides, however, that the
2 parties "disagree about whether prisoners incarcerated at the California Institution for
3 Women (CIW) and the Central California Women's Facility (CCWF), previously litigated in
4 a class action entitled *Shumate v. Wilson* (E.D. Cal.), No. CIV. S-95-0619 WBS JFM P;
5 should be members of the class." *Id.* To resolve this dispute, the parties stipulated that:

6
7 defendants shall move within sixty days after this Stipulation is
8 approved by the Court for an order determining whether
9 prisoners at CCWF and CIW should be excluded from the class
10 on the sole ground that they are not similarly situated to
11 plaintiffs because of the previously litigated class action
12 entitled [*Shumate v. Wilson*]. The motion shall not otherwise
13 alter the burden of proof under Rule 23 or create a presumption
14 concerning their inclusion.

15 *Id.* (emphasis added)..

16 *Shumate*, filed in 1995, was a class action brought against CCWF and CIW alleging
17 that medical care at the two facilities violated the Eighth Amendment. On August 11, 1997,
18 the parties entered into a private settlement. The settlement required, *inter alia*, independent
19 audits in 56 specific health related areas to determine if the two prisons were in "substantial
20 compliance" with the provisions of the settlement agreement. On December 20, 1999, the
21 independent assessor's final assessment report found defendants in compliance with 44 of
22 the 56 areas. Despite remaining problems, the assessor concluded that defendants had met
23 the definition of substantial compliance contained in the settlement agreement. On August
24 21, 2000, the action was dismissed with prejudice.

25 The instant *Plata* litigation, filed one year later, on August 20, 2001, also alleges
26 Eighth Amendment violations relating to medical care. In addition, plaintiffs allege that the
27 medical care system violates provisions of the Americans with Disabilities Act ("ADA"),
28 and section 504 of the Rehabilitation Act. ("RA").

By this motion, and pursuant to paragraph 8 of the stipulation cited above, defendants
contend that CCWF and CIW inmates should be excluded from the *Plata* class on three
grounds: (1) the inmates at CCWF and CIW are not similarly situated because they have a

United States District Court
For the Northern District of California

1 unique *res judicata* defense, (2) the inmates at CCWF and CIW are not similarly situated
2 because *res judicata* affects the appropriate PLRA remedy at these two institutions, and (3)
3 the *Plata* claims are not typical to female prisoners at CCWF and CIW. Each argument is
4 addressed in turn.

5
6 II. DISCUSSION

7 A. Whether the inmates at CCWF and CIW are not similarly situated because they
8 have a unique *res judicata* defense

9 Under Fed. R. Civ. P. 23(a), a party seeking class certification must meet four
10 requirements including a showing that "the claims or defenses of the representative parties
11 are typical of the claims or defenses of the class." Under this provision, class certification
12 has been denied where "a putative class representative is subject to unique defenses *which*
13 *threaten to become the focus of the litigation.*" *Hanon v. Dataproducts Corp.*, 976 F.2d 497,
14 508 (9th Cir. 1992) (emphasis added); *see also Wofford v. Safeway Stores, Inc.*, 78 F.R.D.
15 460, 488 (N.D. Cal. 1978) ("[I]f it is predictable that 'a major focus of the litigation will be
16 on an arguable defense unique to the named plaintiff or a small subclass, then the named
17 plaintiff is not a proper class representative'" (citations omitted).

18 Defendants argue that here, CCWF and CIW should be excluded from the class
19 because these prisons have a unique defense of *res judicata*, and that this defense "will be a
20 major focus of the instant litigation." Defs' Motion at 10. This argument fails because (1)
21 defendants' argument that *res judicata* applies here is not persuasive, and (2) in any event,
22 defendants have not shown that this defense threatens to become the focus of the litigation.

23 The doctrine of *res judicata* acts to bar a subsequent action if there is:

- 24 (1) a final judgment on the merits in a prior suit
25 (2) the new suit involves the same parties or their privies, and
26 (3) both suits are based on the same cause of action
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1 The Court agrees with defendants that the first prong is satisfied. Since *Shumate* was
2 a judicially approved settlement and the case was ultimately dismissed with prejudice, it
3 qualifies as a final judgment on the merits. See e.g. *Rein Provident Financial Corp.*, 270
4 F.3d 895, 902-03 (9th Cir. 2001); *Beard v. Sheet Metal Workers Union*, 908 F.2d 474, 477,
5 n.3 (9th Cir. 1990). Plaintiffs argue that these authorities don't apply here because the
6 *Shumate* settlement expressly provided that "[t]his Settlement Agreement is not a consent
7 decree nor do the parties intend for it to be construed as such. It does not operate as an
8 adjudication of the merits of the litigation." Defs.' Exh. B, ¶ II.A(1).

9 It appears, however, that this language was included in recognition of 18 U.S.C.
10 §3626(c)(2) of the Prison Litigation Reform Act ("PLRA"), which provides that parties who
11 enter into private settlement agreements are not limited by certain restrictions on relief that
12 apply to consent decrees; however, such settlement agreements are not subject to court
13 enforcement other than through the reinstatement of the civil proceeding. As such, the
14 language quoted by plaintiffs appears designed to ensure that plaintiffs could reinstate the
15 action after settlement. Since plaintiffs never elected to reopen the case but instead agreed
16 to a dismissal with prejudice, see Defs.' Exh F, the Court is not convinced that the language
17 relied upon by plaintiffs trumps the ordinary effect given a stipulated dismissal with
18 prejudice.

19 With respect to the second prong, there is no dispute that it is satisfied here. The
20 defendants fail, however, on the third prong. As they emphasize, both the *Shumate* and
21 *Plata* cases involve allegations of deliberate indifference to serious medical needs. As
22 plaintiffs explain, however, the *Plata* case alleges medical care violations based on "new
23 operative facts that could not have been adjudicated in *Shumate*." Pls' Opp. at 7. Where the
24 second suit is based on new facts and conduct that occurred after judgment in the first case,
25 *res judicata* does not apply. As the Ninth Circuit explained in *Clark v. Yosemite Community*
26 *College District*:

1 [T]he doctrine of res judicata does not necessarily preclude all
2 future actions with regard to continuing conduct simply because
3 the previous action sought prospective relief. The doctrine of res
4 judicata extends only to the facts and conditions as they existed
at the time the judgment was rendered When other facts or
conditions intervene, forming a new basis for a claim, the issues
are no longer the same and res judicata does not apply

5 785 F.2d 781, 789 (9th Cir. 1986) (citations omitted); *see also* *Hiser v. Franklin*, 94 F.3d
6 1287, 1289 (9th Cir. 1996) (prisoner claim based on a separate set of operative facts
7 occurring after decree entered in prior class action covering same general issue was not
8 barred by prior class action); *Intermedics, Inc. v. Ventritex, Inc.*, 775 F. Supp. 1258, 1263
9 (N.D. Cal. 1991) (where alleged acts that form basis of second claim occurred after
10 dismissal of the first case, the two suits do not arise out of a common nucleus of facts and
11 res judicata does not apply). In short, since the *Plata* claims against CCWF and CIW are
12 based on recent facts and intervening conditions, *res judicata* does not bar their current
13 Eighth Amendment claims against CCWF and CIW. Indeed, defendants concede that
14 "*Shumate* does not bar an action for future constitutional violations." Defs' Reply at 5.¹

15 Given the above, this Court concludes that the defendants have not shown that CCWF
16 and CIW have a unique defense of *res judicata*. Nor have they made any showing that such
17 a defense would be a major focus of the instant litigation. On the contrary, given the scope
18 of the *Plata* case (covering roughly 30 institutions), the Court is satisfied that the discrete
19 dispute raised by the *res judicata* defense (affecting only two institutions), does not threaten
20 to become a "major focus" of the litigation. Thus, defendants' first ground for excluding
21 CCWF and CIW lacks merit.

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26 ¹ Defendants suggest in passing that any claim for new constitutional violations
27 should have been filed in a separate complaint related back to *Shumate* under local "related
28 case" rules. Given, however, that plaintiffs brought this action as a statewide class action,
and that the parties jointly agreed to relate the case to the *Madrid* case in this court, the
efficiencies to be gained by having a single case would appear to outweigh the efficiencies
gained by relating a new case involving CCWF and CIW to *Shumate*.

1 2. Whether the inmates at CCWF and CIW are not similarly situated because the *res*
2 *judicata* defense affects the appropriate PLRA remedy at these two institutions

3 Although this portion of defendants' papers is not especially well-focused, defendants
4 appear to argue that the women at CCWF and CIW are not similarly situated to other *Plata*
5 class members because, given the *Shumate* litigation, it would be improper under the PLRA
6 to apply the *Plata* remedial plan to CCWF and CIW. Instead, defendants argue, their *res*
7 *judicata* defense "precludes relitigation of the same issues," requires the "identification of
8 new violations" (sometimes referred to by defendants as "constitutional slippage"), and "a
9 unique PLRA remedy." Defs' Reply at 6.

10 After careful consideration, the Court concludes that this argument, which is partially
11 a reformulation of the arguments advanced above, does not hold up to scrutiny. First, to the
12 extent that defendants contend that the plaintiffs are required to separately *prove* new
13 constitutional violations at CCWF and CIW before any remedy can applied – because of the
14 *Shumate* case – this is not in fact correct. Since, as plaintiffs assert and defendants do not
15 dispute, plaintiffs' claims against CCWF and CIW rely on facts and conduct that occurred
16 after dismissal of *Shumate*, there is nothing that requires that plaintiffs prove the new
17 constitutional violations prior to a settlement of those claims. In short, plaintiffs can bring a
18 second suit against CCWF and CIW based on new facts, and the parties are free to settle
19 such claims as part of a state-wide remedy. Indeed, there is a logic to having as many
20 prisons as possible "on the same page."² Thus, the fact of the prior litigation does not, by
21 itself, demonstrate that the *Plata* remedy can not properly apply to CCWF and CIW without
22 separate proof of new constitutional violations at CCWF and CIW.³

23 _____
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25 ² For example, excluding CCWF and CIW could lead to practical difficulties or
26 inconsistencies, given that it is not uncommon for women to transfer between prisons, and
27 one of the issues addressed by *Plata* is inter-institutional transfers.

28 ³ Nor have defendants pointed to anything in the PLRA, or the parties' stipulation in

1 Second, in contending that a "unique" PLRA remedy must be fashioned for CCWF
2 and CIW, defendants rely on the general requirement in the PLRA that any order of
3 prospective relief under § 3626(a)(1)(A) must be narrowly drawn, extend no further than
4 necessary to correct the violation of the right, and be the least intrusive means necessary to
5 correct the violation of the right. 18 U.S.C. § 3626(a); *Armstrong v. Davis*, 275 F.3d 849,
6 872, n.30 (9th Cir. 2001).

7 Defendants suggest that this test for prospective relief under § 3626(a) requires some
8 specialized remedial approach for CCWF and CIW given the prior *Shumate* litigation. As
9 plaintiffs point out, however, the *Plata* settlement agreement expressly provides that "The
10 Court shall find that this Stipulation satisfies the requirements of 18 U.S.C. § 3626(a)(1)(A)
11 and shall retain jurisdiction to enforce its terms." Mitchell Decl., Exh. 1, ¶ 29. In other
12 words, the parties have already stipulated that the remedy agreed to in *Plata* satisfies all of
13 the requirements that are applicable to any remedy imposed upon CCWF and CIW.
14 Defendants attempt to argue that this language in the stipulation applies only to the other
15 prisons, and not CCWF and CIW, but there is nothing in the stipulation to support this
16 interpretation. On the contrary, paragraph 29 is set forth without qualification. As such,
17 defendants have not demonstrated that the PLRA requires a separate remedy for CCWF and
18 CIW.

19 Third, defendants suggest that including CCWF and CIW in the *Plata* class would
20 require the Court to ignore the *Shumate* action, and thus render the entire *Shumate* litigation
21 meaningless. Defendants' concern here, however, is not justified. First, the *Plata* case
22 alleges new constitutional violations, which the *Plata* remedy is designed to address.
23 Second, and of more practical significance, is the fact that there may well be fewer
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25 *Plata*, that requires plaintiffs to separately prove the complaint's post-*Shumate* allegations
26 pertaining to CCWF and CIW (but no other prison) prior to application of an agreed-upon
27 remedy. The fact that the stipulation provides that the instant motion "will not otherwise
28 alter the burden of proof under Rule 23," Mitchell Decl., Exh. 1, Stip. at ¶ 8, does not
support such an argument since Rule 23 only governs to the procedural requirements for
proceeding as a class. Similarly, the language that the instant motion will not "create a
presumption concerning their inclusion," *id.*, does not impose any such requirement.

1 problems at CCWF and CIF than at other institutions *because of progress made under*
2 *Shumate*. This fact will not be ignored, however. On the contrary, it will instead make it that
3 much easier for CCWF and CIF to comply with the *Plata* remedial plan. If, hypothetically,
4 most prisons need to take 10 steps to come into compliance with *Plata*, and CCWF and CIF
5 need only take three, because of progress made under *Shumate*, then *Shumate* will certainly
6 not be rendered meaningless or irrelevant in the instant case.

7 The clear underlying current of defendants' argument here is that conditions are so
8 much better at CCWF and CIW than at other institutions -- because they have been
9 "remediated" by the *Shumate* litigation -- that it is therefore both unnecessary and
10 inappropriate to impose the *Plata* remedial scheme upon CCWF and CIW. *See e.g.* Defs'
11 Reply at 17 ("the care at the *Shumate* institutions is markedly different [than at other
12 California prisons] because they have already undertaken class action remediation"). While
13 this may be defendants' view, it simply fails to account for the fact that *Plata* alleges *new*
14 constitutional violations and that defendants settled these allegations. Moreover, as noted
15 above, to the extent, conditions are in fact significantly better at CCWF and CIW than at
16 other institutions, this can be readily reflected and credited under the *Plata* remedial plan.⁴

17
18 C. Whether the *Plata* claims are not typical to female prisoners at CCWF and CIW

19 Under Fed. R. Civ. P. 23(a)(3), the claims of the representative parties must be
20 "typical" of the claims of the class. Defendants' papers advance two arguments in this
21 regard. First, defendants argue that the class representatives, who are all male, can not
22 adequately represent the interests of the female inmates at CCWF and CIW. As noted
23 above, however, the stipulation only permits defendants to challenge inclusion of CCWF
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26 ⁴ Defendants also argue that it is inconsistent to include CCWF and CIW but not
27 Pelican Bay State Prison (which is not covered by the *Plata* case). However, *Madrid* is still
28 being remediated, and plaintiffs have not alleged that there are new unconstitutional
conditions there relating to medical care. In contrast, the *Plata* plaintiffs do allege such
allegations with respect to CCWF and CIW.

1 and CIW on the ground that inmates at those prisons are not similarly situated to plaintiffs
2 "because of" the *Shumate* litigation. This first argument plainly falls outside the scope of this
3 limitation since the *Shumate* litigation had no affect on the gender of the inmates at CCWF
4 and CIW.⁵

5 Second, defendants argue that the named plaintiffs' claims are not "typical" of the
6 claims of the inmates at CCWF and CIW because "the medical care at these institutions
7 improved dramatically during the course of [the *Shumate*] litigation." Defs' Reply at 10.
8 As such, the "all-male class representatives are not similarly situated to inmates at the
9 *Shumate* institutions because of the prior litigation." *Id.*

10 To the extent that defendants are arguing that the named class representatives can not
11 adequately represent the interests of inmates at CCWF and CIW because conditions are
12 better at those prisons, the Court does not find this argument persuasive. The typicality
13 requirement does not require the suffering of identical wrongs. Rather it is sufficient if the
14 named plaintiffs' claims arise from the same "course of conduct that gives rise to claims of
15 other class members and his or her claims are based on the same legal theory." *Irwin v.*
16 *Mascott*, 96 F. Supp.2d 968 (N.D. Cal. 1999). The previous remedial efforts at CCWF and
17 CIW do not render the named plaintiffs "atypical" of the inmates at those institutions for
18 purposes of Rule 23.

19 To the extent that defendants are attempting to re-insert into this argument the fact
20 that the improved conditions are at *female* institutions, and therefore the named plaintiffs are
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24 ⁵ The Court also notes that defendants rely on cases which hold that men can not
25 represent women in cases alleging discrimination on the basis of sex. In contrast, this case
26 does not raise any issues of gender discrimination. Rather, it concerns systemic problems
27 that affect all inmates regardless of gender and the remedial changes sought are generally
28 gender neutral (e.g. improved inter-institutional transfer, availability of RNs to staff
emergency clinics, consistency of treatment protocols, and improvement of grievance
procedure). See Mitchell Decl., Exh.1 at 4. Notably, the agreed upon class definition
includes other women's institutions, such as the Northern California Women's Facility and
Valley State Prison for Women.

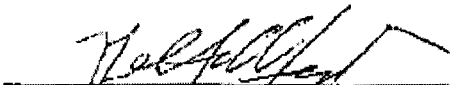
1 not typical of inmates at CCWF and CIW, defendants again fall outside the basis for
2 challenging inclusion of these institutions set forth in the parties' stipulation.

3
4 CONCLUSION

5 For all of the reasons set forth above, this Court concludes that defendants have not
6 demonstrated that CCWF and CIW should be excluded from this action because of the prior
7 *Shumate* action.⁶ Accordingly, and good cause appearing, it is HEREBY ORDERED that
8 defendants' Motion to Exclude CCWF and CIW is denied.

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11 IT IS SO ORDERED.

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13 DATED 5/29/02



THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

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22 ⁶ In their reply brief, defendants argue for the first time that plaintiffs have failed to
23 demonstrate that the requirements of Fed. R. Civ. P. 23(a) are met, with respect to inmates at
24 CCWF and CIW, and therefore defendants' motion to exclude CCWF and CIW should be
25 granted on this ground. This argument is meritless. First it is procedurally improper, having
26 been raised for the first time in a reply brief. Second, a plain reading of the stipulation
27 clearly does not support defendants' strained interpretation that it imposes upon plaintiffs the
28 burden of separately demonstrating that the requirements of Fed. R. Civ. P. 23(a) are met
with respect to inmates at CCWF and CIW. On the contrary, the stipulation expressly limits
defendants to moving to exclude CCWF and CIW because of the *Shumate* litigation.
Defendant makes no argument as to why the *Shumate* litigation would preclude a finding
that the Rule 23(a) requirements are satisfied here. Indeed, defendants fail to identify any
reason why the requirements of Rule 23 would not be satisfied with respect to this group of
inmates. Nor is any such reason apparent to the Court.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, et al.,

Plaintiff,

v.

GRAY DAVIS, et al.,

Defendant.

Case Number: C01-1351 TEH

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 21, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: May 21, 2002

Richard W. Wieking, Clerk

By: *W. Wieking*
Deputy Clerk