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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

AND THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES

PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et. al.,

Plaintiffs,

v.

EDMUND G. BROWN, JR., et al.,

Defendants.

CASE NO. 2:90-cv-00520 LKK JFM P

THREE-JUDGE COURT

MARCIANO PLATA, et al.,

Plaintiffs,

v.

EDMUND G. BROWN, JR., et al.,

Defendants.

CASE NO. C01-1351 TEH

THREE-JUDGE COURT

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' RENEWED MOTION FOR
AN ORDER REQUIRING DEFENDANTS
TO DEMONSTRATE HOW THEY WILL
ACHIEVE THE REQUIRED
POPULATION REDUCTION BY JUNE
2013**

1 **I. INTRODUCTION**

2 Defendants have fully complied with this Court's orders to reduce California's
3 prison population, and contrary to Plaintiffs' assertions, have every intention to continue
4 to do so. This Court set the ultimate population-reduction target at 137.5% of prison
5 design capacity based on conditions existing in 2007, when the prison population was
6 close to its all-time high. And the health care system bore little resemblance to the vastly
7 improved system today. Since 2007, the population has dropped by about 40,000
8 inmates, most of which has come in the last seven months under new realignment
9 legislation. Since realignment went into effect in October 2011, the prison population has
10 already dropped by more than 21,000 inmates bringing the population density down to
11 about 154% of design capacity. The shrinking prison population has substantially aided
12 Defendants' ability to provide quality healthcare, but it has not occurred in isolation. In
13 addition to reducing crowding, tremendous improvements have been made to CDCR's
14 entire health care system. These improvements (which were practically unimaginable in
15 2007) coupled with the shrinking prison population, will allow Defendants to provide a
16 constitutional level of healthcare at a higher prison-population density than originally
17 contemplated. As stated in CDCR's Post-Realignment Plan issued last month,
18 Defendants will seek a modification from the Court to increase the final benchmark to
19 145% of design capacity by demonstrating that they can provide a constitutional level of
20 care at a higher population density.

21 Defendants met the December 2011 population-reduction target on time and the
22 June 2012 target two months early. Defendants have also fully complied with the
23 associated reporting requirements. These reporting requirements ensure that
24 Defendants stay on track while affording them the flexibility needed to reach the targets,
25 or to evaluate, with the receiver's and the Court's cooperation, the efficacy of the final
26 population density target in light of the state's present and future progress in providing
27 appropriate care. The Court's June 30, 2011 order requires Defendants to submit
28 monthly status reports that include an updated discussion on whether defendants expect

1 to meet *the next six-month benchmark* and, if not, what further actions are contemplated
2 and the specific persons responsible for executive those actions.” As the United States
3 Supreme Court stated:

4 As the State makes further progress, the three-judge court
5 should evaluate whether its order remains appropriate. If
6 significant progress is made toward remedying the underlying
7 constitutional violations, that progress may demonstrate that
8 further population reductions are not necessary or are less
9 urgent than previously believed.

10 *Plata v. Brown*, 131 S. Ct. 1910, 1947 (2011). This Court’s requirements reflect the need
11 to continue to evaluate its population-reduction order in light of Defendants’ efforts to
12 remedy the underlying constitutional violations in *Plata* and *Coleman*.

13 It would be counterproductive to require Defendants to develop additional
14 crowding-reduction measures when Defendants have not violated this Court’s order and
15 are continuing to improve the prison health care system while reducing the prison
16 population. As Defendants explain in their comprehensive plan, given the historic inmate
17 population decrease to date, continuing reductions in the inmate population, and system-
18 wide improvements in providing medical, mental health, and dental care, Defendants
19 intend, as additional information concerning these measures is developed, to seek
20 modification of the population-reduction order to allow for the continued delivery of care
21 at a greater population density. Defendants’ plan is fully consistent with the Supreme
22 Court’s recognition that the order should be reevaluated as progress is made.

23 Defendants’ objective, and the purpose of this litigation, is to ensure that inmates
24 are, and continue to be, provided constitutionally adequate care. Defendants are
25 confident that once the December 2012 benchmark is achieved, they will be able to
26 demonstrate to the Court that a constitutional level of health care can be provided at
27 145% of design capacity. Accordingly, Plaintiffs’ motion should again be denied because
28 it is unwarranted and inconsistent with the balanced approach reflected in this Court’s
orders and the Supreme Court’s opinion.

///

1 **II. ARGUMENT**

2 **A. The Motion Should Be Denied Because The Court's Current Reporting**
 3 **Requirements Properly Grant The Appropriate Flexibility To**
 4 **Defendants To Remedy The Underlying Constitutional Violations.**

5 In its August 4, 2009 Order, this Court held that —~~but~~ the PLRA and general
 6 equitable principles require this court to ensure that the population reduction sought by
 7 plaintiffs extends no further than necessary to rectify the unconstitutional denial of
 8 medical and mental health care to California's prisoners.” (8/4/09 Order, *Plata/Coleman*
 9 Dkt. Nos. 2197/3641, at 124.) The United States Supreme Court similarly cautioned that
 10 the population reduction must be limited to only what is required to achieve
 11 constitutionally adequate medical and mental health care systems:

11 As the State implements the order of the three-judge court,
 12 time and experience may reveal targeted and effective
 13 remedies that will end the constitutional violations even
 14 without a significant decrease in the general prison
 15 population. The State will be free to move the three-judge
 16 court for modification of its order on that basis, and these
 17 motions would be entitled to serious consideration.

18 *Plata*, 131 S. Ct. at 1941; see also *id.* at 1945 (“There are also no scientific tools
 19 available to determine the precise population reduction necessary to remedy a
 20 constitutional violation of this sort.”). The Supreme Court also required this Court to
 21 periodically review its population reduction order to evaluate whether it should be
 22 modified and, when Defendants establish that they have made progress in remedying
 23 constitutional violations, to evaluate whether a change in the population limit is
 24 warranted. *Id.* at 1947.

25 Plaintiffs seem to overlook the dramatic population reduction occurring under
 26 realignment, as well as the improvements in the prison medical, mental health, and
 27 dental care systems.¹ (See, e.g., 5/7/12 Hoshino Decl.) For example, in *Coleman v.*
 28

29 ¹ On October 25, 2006, the state housed 162,792 inmates in its 33 in-state prisons. (See
 30 http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services/Branch/WeeklyWed/TPOP1A/TPOP1Ad061025.pdf .) On January 13, 2010, the population decreased
 31 (footnote continued)

1 *Brown*, Defendants have successfully reduced or eliminated the wait lists for high-
 2 custody inmates needing inpatient mental health care. (*Id.* at ¶ 7.) On March 16, 2010,
 3 the wait list for high-custody inmates needing ICF treatment totaled 542 and on March
 4 15, 2010, the wait list for the inmates needing Acute treatment totaled 97. (*Id.*) As of
 5 May 3, 2012, there were only 13 inmates who have been accepted by DMH and were
 6 pending ICF admission, and just three of those inmates have been waiting more than 30
 7 days, all due to medical holds. (*Id.*) Nine inmates were pending Acute admission. (*Id.*)

8 Defendants are also well on their way to resolving *Perez v. Brown*, which
 9 challenged the constitutional adequacy of CDCR's dental care system. (*Id.*, Ex. 2, at p.
 10 51.) To date, 31 of 33 institutions have been reviewed by the dental experts and have
 11 satisfied all of the court-ordered mandates, and Defendants anticipate that all prisons will
 12 pass the audits by August 2012. (*Id.*)

13 In *Plata v. Brown*, the court on January 17, 2012 announced that —it is clear that
 14 many of the goals of the Receivership have been accomplished” and that —the end of the
 15 Receivership appears to be in sight.” (*Plata* Dkt. No. 2417.) The overall average OIG
 16 score of 79.6% should be used as a key indicator of whether the medical care being
 17 provided is constitutionally adequate. (Hoshino Decl., ¶¶ 2-3.) Consistent with the
 18 Court's order, Defendants proposed a viable transition plan and are fully prepared to
 19 resume control of CDCR's medical care system this year. (Hoshino Decl. &
 20 Accompanying Exhibits.) Defendants are also prepared to proceed with the construction
 21 of the California Health Care Facility and renovation of the DeWitt Correctional Facility in
 22 Stockton, which the *Plata* Receiver described as —a significant move forward in meeting

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 24
 25 to 151,036 inmates. (See
 26 http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Weekly_Wed/TPOP1A/TPOP1Ad100113.pdf.) As reported in Defendants' October 14, 2011
 27 report (see Dkt. Nos. 4099-1/2407-1), the in-state prison population when realignment
 28 began was 144,188. As of May 9, 2012, 122,659 inmates were housed in the state's
 adult institutions. (See 5/15/12 Report, Dkt. Nos. 2436/4184.)

1 the mandate of providing adequate inmate-patient care.” (Receiver’s 20th Tri-Annual
2 Report, Dkt. Nos. 2437-1/4185-1, at 1.)

3 Moreover, Defendants have already issued a revised plan that builds upon the
4 changes brought by realignment. (Hoshino Decl., Ex. 2.) Defendants’ plan —~~set~~ forth
5 effective alternative measures that will allow the department to satisfy the court by
6 demonstrating that it can maintain a satisfactory health care system for a higher density
7 population than is dictated in the [population reduction] order.” (*Id.* at 50.) Plaintiffs’
8 claim that they have not received Defendants’ plan is false. Defendants published their
9 plan on April 23, 2012, and Defendants presented the plan to Plaintiffs on April 18, 2012.
10 Although Plaintiffs would have unquestionably suggested a different plan, there is no
11 question that Defendants presented their plan.

12 Plaintiffs ignore these facts and the Supreme Court’s admonitions, and instead
13 cling to the erroneous notion that neither the percentage nor the timing of this Court’s
14 final benchmark can be changed. Plaintiffs also fail to acknowledge that, as set forth in
15 part III below, Defendants have complied with this Court’s orders and reached the June
16 2012 population reduction benchmark two months before being required to do so.
17 Moreover, as set forth in Defendants’ plan, the reduced prison population has already
18 aided CDCR’s ability to provide quality health care. (Hoshino Decl., Ex. 2, at 50.) As the
19 population continues to drop, the quality of prison health care will continue to improve.
20 (*Id.*) Defendants believe that new health care facilities and enhanced treatment and
21 office space at existing prisons will enable CDCR to provide a quality health care system
22 to a higher density prison population than the 137.5% of design capacity originally set by
23 the court. (*Id.*) Accordingly, when Defendants and this Court have the benefit of
24 additional evidence that will follow from further population reductions, further
25 accomplishments by health care staff, and further implementation of Defendants’
26 comprehensive plan for maintaining constitutionally appropriate health care systems,
27 Defendants will move to modify the population density order. Until that time, or until there
28 has been an actual violation of the Court’s order, there is no basis for the relief sought by

1 Plaintiffs.

2 **B. The Motion Is Premature.**

3 Defendants have complied with the Court's first two population reduction targets,
 4 and have reduced the population in the state's 33 institutions to less than 155% of design
 5 bed capacity more than two months early. (See Dkt. Nos. 2436/4184.) Plaintiffs base
 6 their motion on speculation about some possible future violation, but this provides no
 7 basis for the relief they seek. —There is, in our jurisprudence, no doctrine of anticipatory
 8 contempt.” *United States v. Bryan*, 339 U.S. 323, 341 (1950); *see also Thomas v.*
 9 *Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000). An order
 10 granting the relief Plaintiffs seek would violate the fundamental principle of contempt that
 11 —a court must exercise only the least possible power adequate to the end proposed.”
 12 *United States v. Johnson*, 736 F.2d 358, 362 (6th Cir. 1984) (quoting *Shillitani v. United*
 13 *States*, 384 U.S. 364, 371 (1966)).²

14 Plaintiffs mischaracterize the facts when they claim that Defendants have
 15 somehow misled the Court by reporting compliance with the next population reduction
 16 target. But this is precisely—and appropriately—what the order requires. (6/30/11 Order,
 17 Dkt. Nos. 2374/4032, at 3 [The reports shall also include an updated discussion on
 18 whether defendants expect to meet the next six-month benchmark and, if not what further
 19 actions are contemplated and the specific persons responsible for executing those
 20 actions.”].)

21 CDCR's spring 2012 population projection indicates that Defendants may fall short
 22 of reaching the June 2013 population target by about 2,955 inmates. Defendants have

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² The case Plaintiffs rely on to argue that this Court can decide their speculative motion now is distinct because it involved an *actual* violation of a court order: —[t]he defendants did not timely pay the special masters' fees and expenses.” *Hook v. Arizona Dep't of Corr.*, 107 F.3d 1397, 1403 (9th Cir. 1997). Here, Defendants have complied with the Court's population reduction order by achieving the first two population reduction benchmarks ahead of schedule.

1 prepared a plan that —~~et~~s forth effective alternative measures that will allow the
 2 department to satisfy the court by demonstrating that it can maintain a satisfactory health
 3 care system for a higher density population than is dictated in the [population reduction]
 4 order.” (Hoshino Decl., Ex. 2, at 50.) Assuming Defendants do not exceed these
 5 projections, they will seek a modification of the order to raise the final benchmark to
 6 145% of design capacity. Devising new and different crowd-reduction measures now
 7 would potentially undermine Defendants’ carefully constructed post-realignment plan, and
 8 would not be in the state’s best interests, particularly when the projected shortfall of 2,955
 9 inmates (an average of just 89.5 inmates per institution) pales in comparison to a
 10 projected population reduction of 50,760 since October 25, 2006. (*Compare* CDCR’s
 11 10/25/06 population report [reflecting that the state housed 162,792 inmates in its 33 in-
 12 state institutions] *with* Hoshino Decl., Ex. 2, Appx. G [—~~Base~~line Gap Chart” projecting that
 13 the population will be reduced to 112,032 inmates by 6/27/13].) And, as shown by the
 14 declarations of Jay Atkinson and Ross Meier accompanying this opposition, Plaintiffs’
 15 allegations concerning CDCR’s population projections are unfounded, misleading, and
 16 fail to incorporate all relevant evidence. (Decl. Jay Atkinson Supp. Defs.’ Opp’n, ¶¶ 3-7;
 17 Decl. Ross Meier Supp. Defs.’ Opp’n, ¶¶ 3-4.)³

18 **C. Plaintiffs Will Not Be Prejudiced If The Court Denies The Motion.**

19 Defendants have taken many steps to remedy the underlying constitutional
 20 violations in *Plata* and *Coleman*. Defendants have fully complied with the population
 21 reduction order to date, and there is thus no need for Defendants to bring a motion to
 22 modify the order at this time, nor is there any legal basis for this Court to change the
 23 reporting requirements in the population reduction order.

24 Defendants have not violated this Court’s population reduction order, and Plaintiffs

26 ³ If the Court determines that there is any merit to the contentions in Mr. Austin’s
 27 Declaration, Defendants request additional time to submit objections or further rebuttal
 28 evidence.

1 are thus not entitled to any relief. Moreover, the Supreme Court has already decided that
2 an amendment of the population reduction order may be warranted based on new
3 evidence. Such a modification will not cause prejudice. Defendants should be permitted
4 to continue to provide the reports currently required by the Court and seek to modify the
5 order at the appropriate time.

6 **III. CONCLUSION**

7 Plaintiffs have prematurely moved for an order that is inconsistent with the
8 Supreme Court's opinion and with this Court's carefully considered reporting
9 requirements that appropriately recognize the need to evaluate whether the order
10 remains appropriate. Defendants have not violated this Court's order, and imposing
11 further reporting requirements in light of the progress made to date is unwarranted.
12 Plaintiffs' motion should be denied.

13 DATED: May 23, 2012

HANSON BRIDGETT LLP

14
15 By: /s/ Paul B. Mello
16 PAUL B. MELLO
17 Attorneys for Defendants
Edmund G. Brown, Jr., et al.

18
19 DATED: May 23, 2012

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10
11 **UNITED STATES DISTRICT COURT**

12 **EASTERN DISTRICT OF CALIFORNIA**

13 **AND THE NORTHERN DISTRICT OF CALIFORNIA**

14 **UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES**

15 **PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE**

16 RALPH COLEMAN, et. al.,

17 Plaintiffs,

18 v.

19 EDMUND G. BROWN, JR., et al.,

20 Defendants.

CASE NO. 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.

CASE NO. C01-1351 TEH

THREE-JUDGE COURT

26 **DECLARATION OF JAY ATKINSON IN**
27 **SUPPORT OF DEFENDANTS'**
28 **OPPOSITION TO PLAINTIFFS'**
RENEWED MOTION FOR AN ORDER
REQUIRING DEFENDANTS TO
DEMONSTRATE HOW THEY WILL
ACHIEVE THE REQUIRED
POPULATION REDUCTION BY JUNE
2013

1 I, Jay Atkinson, declare:

2 1. I am the Chief of the Offender Information Services Branch for the
3 California Department of Corrections and Rehabilitation (CDCR). I have been with the
4 Offender Information Services Branch of CDCR since 1999, and have assisted in
5 gathering data maintained by CDCR on numerous occasions. I am competent to testify
6 to the matters set forth in this declaration, and if called upon to do so, I would and could
7 so testify. I submit this declaration in support of Defendants' Opposition to Plaintiffs'
8 Renewed Motion for an Order Requiring Defendants to Demonstrate How They Will
9 Achieve the Required Population Reduction by June 2013.

10 2. As Chief of the Offender Information Services Branch, I am responsible for
11 management and oversight of the Offender Information Services Branch that supplies
12 research and analysis to CDCR and outside agencies regarding inmate population
13 estimates and projections.

14 3. I have reviewed Plaintiffs' motion and the supporting declaration of Mr.
15 James Austin. At Paragraph 5(c) of his declaration, Mr. Austin implies that CDCR has
16 underestimated the number of newly admitted inmates following realignment.¹ CDCR's
17 Office of Research uses the most current data and methodology to produce its population
18 projections, and independent experts have defined CDCR's process and projections
19 simulation model as state-of-the art in correctional forecasting. Using those processes
20 and projections, the adult inmate population projection in CDCR's Fall 2011 Population
21 Projections was only one percent higher than the actual population at the end of the first
22 six months of the projections cycle. And the adult inmate population in the Spring 2012
23 Population Projections was 136,447, less than one percent (0.5%) under the actual
24 population of 137,119.

25 4. CDCR's Office of Research provided Mr. Austin with the monthly prison
26

27 ¹ It appears that Mr. Austin incorrectly refers to realignment legislation as AB 510 in his
28 declaration. The Public Safety Realignment Act was initially part of Assembly Bill 109.

1 intake data he used to estimate the annualized admissions in his declaration. Although
2 Mr. Austin fails to detail the method by which he calculated the estimated 25,000
3 institutional admissions asserted at Paragraph 5(c) of his declaration, it appears that he
4 annualized the average number of admissions for the six months from October 2011
5 through March 2012.

6 5. Mr. Austin's methodology caused him to overestimate the annualized
7 admissions in at least two ways. First, Mr. Austin included all admissions in October
8 2011, although CDCR received approximately 400 inmates that month that were
9 sentenced before October 1, 2011, and, due to the nature of their offenses, would not
10 have come to prison if they had been sentenced after the implementation of realignment.
11 Those admissions should be removed from the October 2011 count prior to averaging the
12 six-month intake because that one-time event will not occur again.

13 6. Second, although he had the data, Mr. Austin did not include admissions in
14 April 2012. Had Mr. Austin used all available data, the annualized admissions total
15 approximately 23,700, not the 25,000 estimated by Mr. Austin. Mr. Austin's projected
16 increase of the population deficit by 2,000 to 4,000 in Table 1 of his declaration is thus
17 based on incomplete data and a flawed methodology.

18 7. Moreover, the number of parole violators with a new term (PV-WNTs) was
19 over-projected by a greater number than the slightly under-projected "new admissions" in
20 the Spring 2012 Population Projections. This more than offsets the impact of any under-
21 projected new admissions on the total inmate population.

22
23 I declare under the penalty of perjury under the laws of the State of California and
24 the United States of America that the foregoing is true and correct. Executed in
25 Sacramento, California on May 23, 2012.

26
27 
28 Jay Atkinson

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Defendants.

CASE NO. C01-1351 TEH

THREE-JUDGE COURT

**DECLARATION OF ROSS MEIER IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
RENEWED MOTION FOR AN ORDER
REQUIRING DEFENDANTS TO
DEMONSTRATE HOW THEY WILL
ACHIEVE THE REQUIRED
POPULATION REDUCTION BY JUNE
2013**

1 I, ROSS MEIER, declare as follows:

2 1. I am the Chief of the Population Management Unit of the Division of Adult
3 Institutions for the California Department of Corrections and Rehabilitation (CDCR). I
4 have been employed in this position since March 2010 and have been with the
5 Population Management Unit since 2003. I have assisted in gathering data maintained
6 by CDCR on numerous occasions. I am competent to testify to the matters set forth in
7 this declaration, and if called upon to do so, I would and could so testify. I submit this
8 declaration in support of Defendants' Opposition to Plaintiffs' Renewed Motion for an
9 Order Requiring Defendants to Demonstrate How They Will Achieve the Required
10 Population Reduction by June 2013.

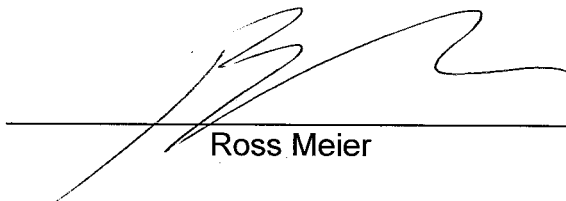
11 2. As part of my duties, I manage the day-to-day intake of offenders from
12 county jails, and the movement and housing of inmates throughout the state prison
13 system.

14 3. I have reviewed Plaintiffs' motion and the supporting declaration of Mr.
15 James Austin. At Paragraph 5(a) of his declaration, Mr. Austin asserts that CDCR's use
16 of California Health Care Facility (CHCF) placements at Stockton is misdirected and
17 implies that these placements should not be included in CDCR's housing capacity. But
18 CDCR anticipates being able to house inmates at CHCF on or before July 27, 2013,
19 admitting inmate-patients at a level acceptable to ensure the appropriate level of
20 treatment for the new admissions. Based on this intake process, CHCF placements will
21 steadily increase throughout 2013, with all CHCF beds occupied by December 27, 2013.

22 4. In addition, included the Governor's May Revise Budget is the
23 Administration's comprehensive plan for CDCR, *The Future of California Corrections*
24 *(Blueprint)*, proposes to renovate the Dewitt Annex to the CHCF and to build three Level
25 II in-fill projects. It is anticipated that the Dewitt Annex will be available to house
26 offenders by June 2014, and that the in-fill projects will be available to house offenders by
27 Fiscal Year 2015/16.

28 ///

1 I declare under the penalty of perjury under the laws of the State of California and
2 the United States of America that the foregoing is true and correct. Executed in
3 Sacramento, California on May 23, 2012.

4
5 
6 _____
7 Ross Meier
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