

DONALD SPECTER – 083925
STEVEN FAMA – 099641
ALISON HARDY – 135966
SARA NORMAN – 189536
REBEKAH EVENSON – 207825
PRISON LAW OFFICE
1917 Fifth Street
Berkeley, California 94710-1916
Telephone: (510) 280-2621

MICHAEL W. BIEN – 096891
JANE E. KAHN – 112239
ERNEST GALVAN – 196065
LISA ELLS – 243657
AARON J. FISCHER – 247391
LAURA BOYSEN-ARAGON – 248083
ROSEN BIEN GALVAN &
GRUNFELD LLP
315 Montgomery Street, Tenth Floor
San Francisco, California 94104-1823
Telephone: (415) 433-6830

CLAUDIA CENTER – 158255
THE LEGAL AID SOCIETY –
EMPLOYMENT LAW CENTER
600 Harrison Street, Suite 120
San Francisco, California 94107-1389
Telephone: (415) 864-8848

WARREN E. GEORGE – 053588
BINGHAM McCUTCHEN LLP
Three Embarcadero Center
San Francisco, California 94111-4067
Telephone: (415) 393-2000

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURTS
EASTERN DISTRICT OF CALIFORNIA
AND 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. Civ S 90-0520 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

**PLAINTIFFS' APPLICATION FOR LIMITED DISCOVERY AND
ORDER TO SHOW CAUSE RE CONTEMPT**

1 For more than a year Defendants have been under an obligation to take “all
2 reasonable steps within their power” to meet the deadlines set by this Court in its January
3 2010 and June 2011 Orders. *Stone v. City & Cnty of San Francisco*, 968 F.2d 850, 856
4 (9th Cir. 1992). Yet, there is no indication that Defendants have ever intended to reduce
5 the population to 137.5% of design capacity by June 27, 2013. Defendants have all but
6 stated that they have no intention of complying with this part of the Court’s Orders. Defs.
7 Resp. to August 3, 2012 Second Order Requiring Further Briefing. Instead, they imply
8 that they are not obligated to comply because they intend to attempt to modify that Order
9 and seek a higher population density that will not “prohibit Defendants from providing
10 constitutionally adequate care.” Defs. Resp. at 3. Defendants intend to rely on evidence of
11 prison conditions that will not occur for more than six months, and plan to file that motion
12 on June 28, 2013, the day after the population must be reduced to 137.5%. *Id.* at 10.

13 This Court recently stated in no uncertain terms that it expected Defendants to take
14 all necessary steps to comply with its June 30, 2011 Order, notwithstanding Defendants’
15 stated intent to move to modify that Order. August 3, 2012 Order at 4; *Cf. Maness v*
16 *Meyers*, 419 U.S. 449, 458 (1975) (“We begin with the basic proposition that all orders
17 and judgments of courts must be complied with promptly. If a person to whom a court
18 directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay,
19 he must comply promptly with the order pending appeal. Persons who make private
20 determinations of the law and refuse to obey an order generally risk criminal contempt
21 even if the order is ultimately ruled incorrect.”). Despite this Order, Defendants’
22 subsequent filings made it clear that they will do nothing more even though their own
23 population projections show that they will not achieve compliance with the final
24 benchmark. Defs. Response to Aug. 3 Order; Defs.’ Aug. 2012 Status Report at 1 (Plata
25 Dkt No. 2461) (“there is no need at this time to undertake additional crowding-reduction
26 measures to achieve compliance”).

27 In addition, Defendants have refused to provide critical information about
28 alternative methods of reducing the prison population. Although the Supreme Court held

1 that it was within this Court's discretion to order the State to develop "without delay" a
 2 system to identify prisoners suitable for early release, *Brown v. Plata*, 131 S. Ct. 1910,
 3 1947 (2012), the State has failed to comply with the Court's order to answer specific
 4 questions on that subject. *See* Aug. 3 Order at 4.

5 The Court should not tolerate such willful disobedience with its lawful orders.
 6 First, the Court should order that within 7 days Defendants answer the following questions
 7 posed by the Court in its August 3, Order or show cause why they should not be held in
 8 contempt for refusing to do so:

9 if the Court ordered defendants "to begin without delay to
 10 develop a system to identify prisoners who are unlikely to
 11 reoffend or who might otherwise be candidates for early
 12 release," *Plata*, 131 S. Ct. at 1947, by what date would they be
 13 able to do so and, if implemented, how long would it take
 14 before the prison population could be reduced to 137.5%? By
 15 what other means could the prison population be reduced to
 16 137.5% by June 27, 2013? Alternatively, what is the earliest
 17 time after that date that defendants contend they could comply
 18 with that deadline?

15 Second, the Court should order Defendants to periodically provide statistical
 16 information to Plaintiffs for review by their expert so that he can form an opinion on the
 17 measures needed to reach 137.5% by June 27, 2013. The parties should be ordered to meet
 18 and confer about the statistical data that will be provided.

19 Third, the Court should permit Plaintiffs to take limited discovery designed to
 20 determine what steps Defendants have taken to comply with the Court's June 30, 2011 and
 21 August 3, 2012 Orders, the population projections that have been produced on those and
 22 all other alternatives considered and what other measures could be taken to safely meet the
 23 population reduction deadlines. Plaintiffs request that the Court order Defendants to
 24 respond within 14 days to the Request for Production of Documents submitted herewith as
 25 **Exhibit A**, and permit Plaintiffs to take a deposition on these subjects under Federal Rule
 26 Civil Procedure, Rule 30(b)(6).

27 ///

28 ///

1 Fourth, the Court should hold a status conference in sixty days on Defendants'
 2 progress in meeting the population deadlines. The Court should order that a representative
 3 of the Governor's office and the Secretary of the CDCR be personally present at that
 4 hearing.¹

5
 6 DATED: August 22, 2012

Respectfully submitted,

7 PRISON LAW OFFICE

8 By: /s/ Donald Specter
 9 Donald Specter

10 Attorneys for *Plata* Plaintiffs

11
 12 DATED: August 22, 2012

ROSEN BIEN GALVAN & GRUNFELD LLP

13 By: /s/ Michael W. Bien
 14 Michael W. Bien

15 Attorneys for *Coleman* Plaintiffs

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 27 ¹ This hearing may be conducted by a single judge or by all three judges. 28 U.S.C.
 28 § 2284(b)(3).

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EXHIBIT A

DONALD SPECTER – 083925
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Case No. C01-1351 TEH
THREE JUDGE COURT

**PLAINTIFFS' FIRST JOINT SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS**

PROPOUNDING PARTIES: COLEMAN and PLATA PLAINTIFFS

RESPONDING PARTIES: DEFENDANTS BROWN, CATE, MATOSANTOS and ALLENBY

SET NUMBER: FIRST JOINT SET

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Federal Rules of Civil Procedure Rule 34, Plaintiff Ralph Coleman requests that Defendants BROWN, CATE, MATOSANTOS, and ALLENBY (“Defendants”) produce all responsive Documents requested herein at the office of Plaintiff’s counsel, Rosen Bien Galvan & Grunfeld LLP at 315 Montgomery Street, Tenth Floor, San Francisco, California, 94104. The date of production shall be thirty (30) days from the date of these Requests, or on such other date as counsel may mutually agree.

INSTRUCTIONS

1. The following Requests require the production of all responsive documents within the sole or joint possession, custody, or control of any agents, agencies, boards, departments, employees, servants, representatives, consultants, counsel, and/or other persons or entities acting or purporting to act on Defendants’ behalf, or otherwise subject to the control of any Defendants.

2. The following Requests are continuing in nature and require prompt supplemental responses for any and all responsive documents that come into any Defendant’s sole or joint possession, custody, or control after the service of any initial responses hereto.

3. The following Requests require the production of preliminary drafts, revisions, and/or copies of any such document if the copy is in any way different from the original.

4. The following Requests require the production of all transmittal sheets, cover letters, exhibits, enclosures and attachments to the documents, in addition to the documents themselves.

5. Pursuant to Federal Rule of Civil Procedure 34(b), all responsive documents are required to be produced either: (a) as they are kept in the usual course of business (together with copies of any file labels or binder covers for the files or binders in which they are maintained); or (b) organized and labeled to correspond with the categories of the

1 Requests to which they respond.

2 6. If any responsive document is maintained in a computer-readable form, the
3 document shall be produced: (a) in hard copy form, in a format generally used in the
4 ordinary course of business; and (b) on disk, tape, or other form of computer storage, with
5 instructions necessary to convert the information into reasonably usable form (including
6 the name and version number of the program used to create or read the data).

7 7. In construing the Requests herein, the singular shall include the plural and
8 the plural shall include the singular. A masculine, feminine or neutral pronoun shall not
9 exclude the other genders, so that the interpretation applied results in the more expansive
10 production. The terms “and” and “or” shall be construed broadly and expansively as
11 “and/or,” and shall not be construed to limit the documents or information sought in any
12 manner.

13 8. If any Request demands production of documents that have been lost,
14 discarded, or destroyed, identify such documents as completely as possible. Such
15 identification shall include, but is not limited to, a description of the subject matter of the
16 document, the author of the document, the date of the document’s creation, the date of
17 disposal, manner of disposal, reason for disposal, person authorizing the disposal and
18 person disposing of the document.

19 9. For any responsive document or portion thereof that is either redacted or
20 withheld, in whole or in part, on the basis of any assertion of privilege or other asserted
21 exemption from discovery, furnish a list identifying each document, or portion thereof, not
22 produced for this reason, together with the following information: (a) the title or identity
23 of the document; (b) the date of the document; (c) the type or nature of the document;
24 (d) the identity, title, or responsibilities, and relationship to Defendants of all persons who
25 either prepared or received the document; (e) the number of pages and attachments; (e) the
26 type and nature of the privilege or exemption asserted; and (f) the contents or subject
27 matter of the document, with sufficient detail to explain the basis for the privilege or
28 exemption asserted (*see* Fed. R. Civ. P. 26(b)(5)). For any responsive document or portion

1 thereof that may not properly be redacted or withheld in its entirety, produce each and
 2 every portion thereof to which the claimed privilege or exemption does not apply and
 3 specify, on the face of each such page or portion, the fact and reason for the redaction or
 4 withholding.

5 DEFINITIONS

6 1. “DOCUMENT” or “DOCUMENTS” as used herein is intended to have the
 7 broadest possible meaning and to include anything coming within the definition of
 8 “writings” and “recordings” as set forth in Rule 1001(1) of the Federal Rules of Evidence.
 9 The term refers to but is not limited to the product of any method of recording information,
 10 whether by writing or otherwise, including without limitation: any written, electronic, or
 11 computerized files, data or software; memoranda; correspondence; communications;
 12 reports; summaries; studies, analyses; evaluations; notes or notebooks; indices; logs;
 13 books, booklets or binders; pamphlets; calendar or diary entries; ledger entries; press
 14 clippings; graphs; tables; charts; drawings; maps; meeting minutes; photographs;
 15 transcripts; audio or video recordings or tapes; facsimile transmissions; electronic mail
 16 messages; and the like. “DOCUMENT” shall include each copy of any whole or part of a
 17 document on which there appears any marking or deletion which does not appear on the
 18 original or other copies thereof, together with all drafts or notes for the preparation of each
 19 document. If the original of a document is not available, “DOCUMENT” includes any
 20 identical copy of the original.

21 2. Unless otherwise indicated, “RELEVANT TIME PERIOD” for the purpose
 22 of these Requests means the time period from **January 1, 2010 until the present.**

23 3. “REFER(S) TO” or “RELATE(S) TO” means constituting, representing,
 24 defining, depicting, concerning, embodying, reflecting, identifying, stating, mentioning,
 25 addressing, or pertaining to the subject matter of the request in whole or in part, directly or
 26 indirectly.

27 4. “INCLUDING” means “including, but not limited to,” and is not to be
 28 construed to limit a Request.

1 No. 4016).

2 b. RELATED to the legislation YOU referred to as “Senate Bill 1399, effective
3 January 1, 2011” in YOUR filing with this Court of June 7, 2011 (*Coleman* Docket No.
4 4016).

5 c. RELATED to the legislation YOU referred to as “Senate Bill 1266, effective
6 January 1, 2011” in YOUR filing with this Court of June 7, 2011 (*Coleman* Docket No.
7 4016).

8 d. RELATED to the legislation YOU referred to as “Assembly Bill 109, signed
9 into law on April 4, 2011” in YOUR filing with this Court of June 7, 2011 (*Coleman*
10 Docket No. 4016).

11 e. RELATED to the legislation YOU referred to as “AB 117” in YOUR filing
12 with this Court of July 20, 2011 (*Coleman* Docket No. 4043).

13 f. RELATED to the legislation YOU referred to as “AB 118, Act of June 30,
14 2011, Ch. 40, § 3” in YOUR filing with this Court of July 20, 2011 (*Coleman* Docket No.
15 4043).

16 **REQUEST FOR PRODUCTION NO. 2:**

17 ALL DOCUMENTS and COMMUNICATIONS that REFER or RELATE to
18 STUDIES, REPORTS, PROJECTIONS, OR ESTIMATES of prison population
19 projections or trends developed by the Office of Research for the California Department of
20 Corrections and Rehabilitation during the RELEVANT PERIOD.

21 **REQUEST FOR PRODUCTION NO. 3:**

22 ALL DOCUMENTS and COMMUNICATIONS that REFER or RELATE to
23 STUDIES, REPORTS, PROJECTIONS, OR ESTIMATES of prison population
24 projections or trends developed by the Population Management Unit of the Division of
25 Adult Institutions for the California Department of Corrections and Rehabilitation during
26 the RELEVANT PERIOD.

27 **REQUEST FOR PRODUCTION NO. 4:**

28 ALL DOCUMENTS and COMMUNICATIONS that REFER or RELATE to

1 STUDIES, REPORTS, PROJECTIONS, OR ESTIMATES developed during the
2 RELEVANT PERIOD regarding the data consulted or relied on in preparing all of the
3 Status Reports filed by YOU pursuant to the Court's January 12, 2010 and June 30, 2011
4 Orders.

5
6 DATED: August 22, 2012

PRISON LAW OFFICE

7 By: /s/ Donald Specter
8 Donald Specter

9 Attorneys for *Plata* Plaintiffs

10
11 DATED: August 22, 2012

ROSEN BIEN GALVAN & GRUNFELD LLP

12 By: /s/ Michael W. Bien
13 Michael W. Bien

14 Attorneys for *Coleman* Plaintiffs
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