

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 DAVID S. CHANEY
Chief Assistant Attorney General
3 ROCHELLE C. EAST
Senior Assistant Attorney General
4 JONATHAN L. WOLFF
Senior Assistant Attorney General
5 LISA A. TILLMAN – State Bar No. 126424
Deputy Attorney General
6 KYLE A. LEWIS – State Bar No. 201041
Deputy Attorney General
7 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
8 Telephone: (415) 703-5708
Facsimile: (415) 703-5843
9 lisa.tillman@doj.ca.gov
kyle.lewis@doj.ca.gov

HANSON BRIDGETT LLP
JERROLD C. SCHAEFER - 39374
PAUL B. MELLO – 179755
S. ANNE JOHNSON – 197415
SAMANTHA D. TAMA – 240280
RENJU P. JACOB - 242388
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
jschaefer@hansonbridgett.com
pmello@hansonbridgett.com
ajohnson@hansonbridgett.com
stama@hansonbridgett.com
rjacob@hansonbridgett.com

10 Attorneys for Defendants

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12 **UNITED STATES DISTRICT COURT**
13 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
14 **AND THE NORTHERN DISTRICT OF CALIFORNIA**
15 **UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES**
16 **PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE**
17

18 RALPH COLEMAN, et al.,
19 Plaintiffs,

20 v.

21 ARNOLD SCHWARZENEGGER, et al.,
22 Defendants.

No. 2:90-cv-00520 LKK JFM P

THREE-JUDGE COURT

23 MARCIANO PLATA, et al.,
24 Plaintiffs,

25 v.

26 ARNOLD SCHWARZENEGGER, et al.,
27 Defendants.

No. C01-1351 TEH

THREE-JUDGE COURT

**DEFENDANTS' PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW
RE RULING ON PLAINTIFFS' REQUEST
FOR A PRISONER RELEASE ORDER**

To: Three-Judge Panel

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According to the Three-Judge Panel's January 9, 2009 Order, Defendants offer the attached proposed Findings of Fact and Conclusions of Law in support of their request that this Three-Judge Panel deny Plaintiffs' request for a prisoner release order under the Prison Litigation Reform Act, 18 U.S.C. §3626. Defendants' submission of these proposed Findings of Fact and Conclusions of Law is not, and should not be construed as, a concession or waiver of any legal or factual argument.

DATED: January 23, 2009 HANSON BRIDGETT LLP

By: /s/ Paul B. Mello

PAUL B. MELLO
Attorneys for Defendants
Arnold Schwarzenegger, et al.

DATED: January 23, 2009 EDMUND G. BROWN JR.
Attorney General of the State of California

By: /s/ Lisa A. Tillman

LISA A. TILLMAN
Deputy Attorney General
Attorneys for Defendants
Arnold Schwarzenegger, et al.

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IN THE UNITED STATES DISTRICT COURTS
FOR THE 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. ARNOLD SCHWARZENEGGER, et al., Defendants.
MARCIANO PLATA, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants.

No. 2:90-cv-00520 LKK JFM P <u>THREE-JUDGE COURT</u>
No. C01-1351 TEH <u>THREE-JUDGE COURT</u> [PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW RE DENIAL OF PLAINTIFFS' REQUEST FOR A PRISONER RELEASE ORDER

1 I. INTRODUCTION

2 Plaintiffs seek a prisoner release order of approximately 52,000 inmates over a 2-
3 year period, and they seek to require California to maintain its prison population at that
4 level once the reduction is achieved. (Pls.' Trial Br., 11/05/08, *Plata* Dock. No. 1766, at
5 3:8-11, Trial Tr., 12/2/08, at 1026:21-1027:17.)¹ Plaintiffs contend that this "prisoner
6 release order" would remedy constitutional violations with respect to the delivery of
7 medical and mental health care to inmates in California's 33 prisons. (Pls.' Trial Br. at
8 1.) Plaintiffs' request for a prisoner release order is governed by the Prison Litigation
9 Reform Act (PLRA), 18 U.S.C. § 3626. Under the PLRA, a prisoner release order is the
10 remedy of last resort.

11 Trial of Plaintiffs' request for a prisoner release order took place for fourteen days
12 before this Three-Judge Panel, with evidence presented to the Court by all parties,
13 including Defendant Intervenors. (See Minute Entries re: Bench Trials, *Plata* Dock. Nos.
14 1826, 1831, 1839, 1844, 1876, 1878, 1881, 1896, 1917, 1926, 1930, 1938, 1965, 1971.)
15 Having reviewed and considered the evidence and the governing law, this Court denies
16 Plaintiffs' request for a prisoner release order.

17 As detailed in the Findings of Fact and Conclusions of Law set forth below, this
18 Court finds that Plaintiffs did not meet their burden under the PLRA of establishing by
19 clear and convincing evidence that crowding is the primary cause of constitutional
20 violations in the prison medical and mental health care system, and that a prisoner
21 release order is the only remedy that can address the violations.

22 Prison overcrowding is a concern to the State of California. (See Pls.' Trial Ex. 1 -
23 Governor's Emergency Proclamation Regarding Overcrowding, October 4, 2006; Scott
24 Kernan Aff., 10/30/08, *Plata* Dock. No. 1636, 1:20-2:6; Trial Tr., 12/9/08 at 1668:4-22.)
25 Overcrowding has resulted in the use of non-traditional beds, where inmates have been
26 bunked in gymnasiums and day rooms. (Kernan Aff., ¶¶ 4, 14; Defs.' Tr. Exs. 1303,
27

28 ¹ These findings of fact reference *Plata* docket numbers for Three-Judge Panel docket
entries.

1 1304.) However, the existing record does not establish that overcrowding is "the primary
2 cause of" existing inadequacies in the delivery of prison medical and mental health care.
3 Moreover, the record establishes that, through methods that are much less intrusive than
4 a prisoner release order, the conditions in the prisons are improving. The use of non-
5 traditional beds is declining. (*Id.*) At the same time, and as detailed below, substantial
6 improvements have been achieved in the delivery of prison medical and mental health
7 care. (See, e.g., Trial Trs., 11/20/08 at 441:18-24, 442:2-7, 450:5-12, 450:20-451:2,
8 454:21-455:12; 454:21-455:12; 12/2/08, at 846:2-10; 12/3/08, at 1212:22-1213:15;
9 12/10/07 Dep. of Ronald Shansky at 117:12-118:2; Defs.' Tr. Ex. 1100 – Receiver's
10 Ninth Quarterly Report, 09/15/08, *Plata* Dock. No. 1472 at 8-12, 15-24, 33-34, 40-41, 51-
11 58; Defs. Trial Ex. 1112, *Coleman* Special Master's 20th Monitoring Report, 9/12/08,
12 *Coleman* Dock. No. 3029, internal p. 6.) Further improvements are anticipated.

13 These facts lead this Court to conclude that while overcrowding may complicate
14 the inadequacies in the delivery of medical and mental health care, it is not the root
15 cause of the violations and even a substantial reduction in the prison population would
16 not remedy them.

17 Additionally, in determining whether to issue a prisoner release order, this Court is
18 required to give substantial weight to any adverse impact on public safety or the criminal
19 justice system. 18 U.S.C. § 3626(a)(1)(A). Plaintiffs seek a substantial, approximately
20 one-third, reduction in the prison population. Plaintiffs provided evidence about different
21 methods by which the prison population could be reduced. Plaintiffs' own expert, Dr.
22 Austin, testified that these methods could not achieve a reduction of 50,000 or more
23 unless legislative reforms were implemented to release second strikers or lifers before
24 the end of their sentences. (Trial Tr., 12/4/08 at 1435:15-1436:22; 1439:8-1440:11.)
25 Based upon the record, this Court concludes that the prisoner release order Plaintiffs
26 request would likely result in the occurrence of additional crimes in the community and
27 may result in an increase in the crime rate. This is due, in part, to the fact that
28 California's local governments do not have the needed resources to reduce the

1 likelihood that former inmates will reoffend. Additional arrests, jail admissions,
2 prosecutions, and probationers would strain already thinly stretched local resources, as
3 would the necessity to retain or release inmates at the local level if a State prison
4 population cap were in place. (See, e.g., Am. Expert Report of Jerry Dyer, 12/12/2008,
5 *Plata* Dock. No. 1937, ¶¶ 26-30.)

6 This Court does not have the power to order the appropriation or allocation of
7 resources needed to fix overcrowding problems or to mitigate or eliminate the likely
8 adverse impact of a prisoner release order on public safety and local criminal justice
9 systems. That is the domain of the legislative and executive branches. See *Rhem v.*
10 *Malcom*, 507 F.2d 333, 341 (2d Cir. 1974).

11 This Court concludes that Plaintiffs' requested prisoner release order is not
12 narrowly drawn, extends further than necessary, and is not the least intrusive means
13 necessary to correct the existing constitutional inadequacies in the delivery of medical
14 and mental health care. Plaintiffs' requested prisoner release order is broad, not narrow,
15 relief. It calls for a one-third reduction in the overall population and is directed at the
16 general prison population, not the *Plata* and *Coleman* classes. Under these
17 circumstances and on this record, the relief requested by Plaintiffs is barred by the
18 PLRA.

19 II. PROCEDURAL BACKGROUND

20 A. *Plata*

21 Plaintiffs filed the *Plata* lawsuit on April 5, 2001. (Pls.' Compl., 4/5/01, *Plata* Dock.
22 No. 1.) Plaintiffs amended their complaint on August 20, 2001. (Defs.' Tr. Ex. 1059 -
23 Pls.' Am. Compl., 8/20/01, *Plata* Dock. No. 20.) *Plata* is a class action lawsuit
24 concerning the constitutional adequacy of medical care provided to those California
25 Department of Corrections and Rehabilitation (CDCR) inmates with "serious medical
26 needs." (Defs.' Tr. Ex. 1059 - Pls.' Am. Compl., 8/20/01, *Plata* Dock. No. 20:52:22-53:4;
27 55:16-23; Defs.' Tr. Ex. 1060 - Stip. for Inj. Relief, 6/13/02, *Plata* Dock. No. 68 at 5:7.)
28 The *Plata* class consists of inmates with serious medical needs. (Joint Statement re:

1 Statement of Undisputed Facts Regarding Phase I Issues (UF), 11/17/08, *Plata Dock*.
2 No. 1815, *Coleman Dock*. No. 3301 at No. 1.)

3 In the *Plata* case, the parties negotiated a settlement of the litigation which is
4 encompassed in the Stipulation and Order for Injunctive Relief (Stipulation) which was
5 approved by the Court on June 13, 2002. (UF No. 3.)

6 The Court ordered the appointment of a Receiver to take control of CDCR's
7 medical care system. This appointment became effective April 17, 2006. (UF No. 4.)

8 **B. *Coleman***

9 In 1990, the *Coleman* Plaintiffs filed this class action under 42 U.S.C. § 1983
10 alleging that the mental health care services provided by CDCR were so inadequate that
11 the class members' rights under the Eighth and Fourteenth Amendments were violated.
12 (Defs.' Tr. Ex. 1035- Pls.' Compl.; Ex. 1036 - Pls.' Am. Compl., 07/25/1991, *Coleman*
13 *Dock*. No. 60, ¶ 30.) The *Coleman* class consists of inmates with serious mental
14 disorders. (UF No. 2.)

15 In 1995, the *Coleman* Court entered a judgment of injunctive relief and appointed
16 a Special Master to oversee the development of a constitutionally compliant mental
17 health care system. (UF No. 5.) *Coleman v. Wilson*, 912 F. Supp. 1282 (E.D. Cal.
18 1995). The *Coleman* Court directed Defendants to establish the elements of a
19 constitutionally adequate mental health care system: (a) uniform policies and procedures
20 for the delivery of mental health care; (b) appropriately licensed and credentialed clinical
21 staff and support staff, both in the prisons and in central office headquarters, with
22 sufficient number to perform their responsibilities; (c) appropriate space for the provision
23 of mental health services to the inmate-patient population that can accommodate
24 services of a growing population, especially for the higher treatment levels that require
25 residential care; and (d) an adequate information management system for recordkeeping
26 and medication management; and an adequate suicide prevention protocol. *Id.* at 1298,
27 n. 10; *Dezember Aff.*, ¶ 11.

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1 **C. Three-Judge Panel Proceedings**

2 On November 13, 2006, Plaintiffs filed their motion to convene a Three-Judge
3 Panel. Over Defendants' objections, the *Plata* and *Coleman* Courts held a joint hearing
4 on June 27, 2007. On July 23, 2007, the Court granted Plaintiffs' motion to convene this
5 Three-Judge Panel. (UF No. 6.) On September 19, 2007, the Three-Judge Panel
6 granted motions to intervene to the following groups of intervenors: (1) County
7 Intervenors, (2) Sonoma County and officials from Sonoma County, (3) Legislative
8 Intervenors, (4) Law Enforcement Intervenors, and (5) District Attorney Intervenors. In
9 addition, CCPOA was also granted intervenor status. (Order, *Plata* Dock. No. 857 at 6-
10 7.)

11 Trial in the Three-Judge Panel proceedings began on November 18, 2008, and
12 the last day of trial was December 19, 2008. The Court held fourteen days of trial. (See
13 Minute Entries re: Bench Trials, *Plata* Dock. Nos. 1826, 1831, 1839, 1844, 1876, 1878,
14 1881, 1896, 1917, 1926, 1930, 1938, 1965, 1971.)

15 **III. FINDINGS OF FACT**

16 **A. Crowding Is Not the Primary Cause of the Constitutional Violations**
17 **Regarding Prison Medical and Mental Health Care, and a Prisoner Release**
18 **Order Is Not the Only Remedy that Can Address the Violations.**

19 **(1) Background**

20 1. As of the end of August 2008, there were 156,352 inmates in California's
21 33 prisons (excluding camps and contracted beds). (Trial Aff. of Scott Kernan, 10/30/08,
22 (Kernan Aff.) *Plata* Dock. No. 1636, ¶ 4; Trial Aff. of Matthew Cate, 10/30/08, (Cate Aff.)
23 *Plata* Dock. No. 1717 ¶ 10.) Overall, the California Department of Corrections and
24 Rehabilitation housed 167,269 inmates in its adult institutions, including contracted out-
25 of-state prisons. (Kernan Aff. ¶ 13.) The other 15,705 inmates not housed in in-state
26 prisons were housed as follows: 4,788 in out-of-state prisons, 6,312 in community
27 correctional facilities, 4,386 in Fire Camps, and 219 in Department of Mental Health state
28 hospitals. (Defs.' Ex. 1203 - August 27, 2008 Weekly Population Report; Cate Aff. ¶ 10.)
Community correctional facilities, Fire Camps, and Department of Mental Health

1 hospitals are not overcrowded. (Cate Aff. ¶ 13; Radavsky Aff. ¶ 17.)

2 2. The number of non-traditional beds has decreased from 19,618 in August
3 2007 to 14,539 (13,467 male and 802 female) in August 2008. (Kernan Aff. ¶¶ 4, 14;
4 Defs.' Tr. Exs. 1303 – Master Bed Rosters, 1304 – Institution Activation Schedules.)

5 3. There is no clear relationship between percentage of design capacity and
6 the ability to deliver a constitutionally adequate level of medical and mental health care.
7 (Trial Tr., 11/20/08 at 483:7-18.) Six of Plaintiffs' experts testified that it was possible to
8 provide adequate medical and mental health care in overcrowded prisons. (Trial Trs.,
9 11/19/08 at 241:2-6 (Beard); 286:4-18 (Lehman); 336:10-17 (Haney); 405:19-406:14
10 (Woodford); 11/20/08 at 437:1-20, 483:13-17 (Shansky); 11/18/08 at 115:5-9 (Stewart).)

11 4. Four of Plaintiffs' experts spoke in terms of "operable" capacity and not
12 design capacity. (Trial Trs., 12/5/08, 1346:8-12 (Beard); 12/2/08 at 950:15-952:17
13 (Haney); 12/11/08 at 2222:14-21 (Stewart); Trial Tr., 11/20/08 (Shansky).) There was no
14 evidence regarding what the "operable" capacity of CDCR's prisons is in connection with
15 the delivery of medical or mental health care. (Trial Tr., 12/5/08 at 1590:18-1591:1.)
16 California's prison population has decreased since October 2006. (Kernan Aff.,
17 10/30/08, *Plata* Dock. No. 1636, ¶ 4.)

18 **(2) Plata**

19 **(a) Improvements in the Delivery of Medical Care**

20 5. Plaintiffs' witness, Jeffrey Beard, the Secretary of the Pennsylvania
21 Department of Corrections, testified that a system's death rate is an important factor in
22 evaluating the level of care being provided by the system. He also acknowledged that
23 CDCR had the 14th best rate nationally, while his system, Pennsylvania, fell in the
24 bottom 5 nationally. (Trial Tr., 11/19/08, at 244:7-27.)

25 6. As explained through the testimony of Christopher Mumola (entered as
26 written deposition testimony), the average annual mortality rate for all illnesses per
27 100,000 state prisoners from 2001 to 2004 was 223 nationwide, 181 for States in the
28 west region, and 170 for California. Thirty-six states had higher mortality rates than

1 California during this period. (Trial Tr., 12/3/08, at 1271:9-1272:21.) From 2001 to 2005,
2 this rate was 224 nationwide, 184 for the west region, and 172 for California. (*Id.* at
3 1276:15-1277:23.) The average annual rate of mortality from all causes for California
4 prisoners, during 2001 to 2004, was 34 percent lower than the average annual rate of
5 death from all causes for U.S. Residents age 15 to 64, during 2001 to 2003. After
6 excluding transportation accidents, the rate was 30% lower. (*Id.* at 1271:3-18.)

7 7. The Receiver has been in control of CDCR's medical care delivery system
8 since April 2006. (UF No. 4.) Since that time, the State's spending on health care has
9 increased by approximately 80 percent, from \$1.635 billion in the Fiscal Year 2006/2007
10 to \$2.249 billion in the Fiscal Year 2008/2009. (Trial Tr., 12/3/08, at 1210:4-13; 1213:17-
11 22; 1215:20-1216:20.)

12 8. During the Receivership, peer review and death review programs have
13 improved. (Trial Tr., 11/20/08 at 450:5-12, 454:21-455:12; 454:21-455:12; 12/10/07
14 Dep. of Ronald Shansky at 117:12-118:2.) The number of alleged preventable asthma
15 deaths went from 6 in 2006 to 0 in 2007. (Trial Tr., 11/20/08, at 450:20-451:2.) The
16 number of alleged preventable deaths went from 18 in 2006 to 3 in 2007. (*Id.* at 486:16-
17 22; 487:2-5; 12/10/07 Shansky Dep. at 74:7:16.) Deaths have trended down in the last
18 10 quarters. (Trial Tr., 11/20/08, at 454:21-455:12.)

19 9. Plaintiffs' correctional medical care expert, Dr. Ronald Shansky, testified
20 that some prisons may currently provide constitutional levels of care and that the level of
21 care varies from prison to prison and unit to unit within the CDCR's prisons. (*Id.* at
22 456:11-15.)

23 10. Post-tour letters written by Plaintiffs' counsel describe significant
24 improvements in the delivery of medical care. For example, at Mule Creek State Prison
25 and Kern Valley State Prison, Plaintiffs' own attorneys found the following:

26 Mule Creek State Prison's compliance with key access to
27 care time frame requirements, including for registered nurse
28 triage and PCP appointments, including chronic care as well
as for specialty care is generally very good at present time.
(*Id.* at 441:18-24.)

1 Certain exceptions are mentioned below. This is due to,
2 among other things, diligent efforts by staff, including the
3 schedulers, a relatively large number of PCP's allowing at
4 times for the scheduling of double PCP lines in clinics and the
5 low vacancy rate among RN's. (*Id.* at 442:2-7.)

6 While there were a number of requirements of the policies
7 and procedures that had not yet been put into place on this
8 tour, I am optimistic that KVSP will continue to speedily
9 improve its *Plata* compliance. The dedication and
10 competence of staff at KVSP was visible in the following
11 areas: Utilization management, where there was no backlog,
12 and a nurse who was very knowledgeable about the
13 individual patients whose medical issues I raised. Pharmacy,
14 which was clearly running very smoothly under the
15 supervision of two skilled pharms ones. Appeals, which have
16 made significant improvements and had been much helped
17 by frequent visits by HCSD. Medical Records, where the
18 loose filings and Olsen requests were carefully monitored and
19 controlled. And specialty, which is tracking the relatively
20 small number of pending appointments properly despite
21 lacking the specialty acknowledging report system used in
22 other institutions. (See Trial Tr., 12/3/08, at 1212:22-
23 1213:15.)

24 11. Staffing of health care and custodial personnel has increased substantially:

25 a. Physicians: CDCR's physician staffing has increased dramatically,
26 and is within 5% of the Receiver's goal to fill 90% of physician positions. (Trial Tr.,
27 11/20/08, at 445:7-446:14; 447:9-448:5.) Between November 2007 and August 2008
28 the CDCR hired 62 full-time state employed primary care physicians. (Defs.' Tr. Ex.
1235 – Staffing Progress for Medical and Mental Health at 3.)

1 b. Chief Physicians and Surgeons: Since October 2005, the time the
2 *Plata* court issued its findings of fact and conclusions of law regarding the appointment
3 of a receiver, the number of full-time state employed Chief Physicians and Surgeons
4 rose from 10 to 28 in August 2008. (*Id.* at 2.)

5 c. Physician Assistants: The number of Physician Assistants, also
6 referred to as physician extenders, rose from 1 in April 2006 to 13 in August 2008. (*Id.*
7 at 4.)

8 d. Nurse Practitioners: Nurse Practitioners, also physician extenders,
9 rose from 11 in October 2005 to 44 in August 2008. (*Id.* at 5.)

1 e. Registered Nurses: The number of registered nurses rose from 818
2 in October 2005 to 1556 in August 2008. This is despite the fact that there is a national
3 shortage of RNs. Staffing of registered nurses has increased and is now within 2% of
4 the Receiver's statewide goal to fill 90% of nursing positions. (Trial Tr., 11/20/08, at
5 445:7-446:14; 447:9-448:5.)

6 f. Licensed Vocational Nurses: The number of licensed vocational
7 nurses rose from 4 in May 2007 to 937 in August 2008. (Defs.' Tr. Ex. 1235 at 7.)

8 g. Correctional Officers: The number of correctional officers employed
9 by the department rose from 20,741 in October 2005 to more than 24,090 in August
10 2008. (*Id.* at 8.)

11 12. In addition to full-time state employees, large numbers of registry
12 physicians and nurses fill much of the remaining vacancies in CDCR healthcare
13 positions. Likewise, the far reduced number of correctional officer vacancies is largely
14 filled by overtime. (Trial Tr., 12/10/08, at 1904:21-1905:3.)

15 13. During the Receivership, other improvements include: (a) New screening
16 and assessment processes at reception and release; (b) New health care access units --
17 that include large numbers of correctional officers charged with ensuring inmate access to
18 medical care; (c) Establishing new and better health care scheduling and patient-inmate
19 tracking systems; (d) Redesigning and improving sick call processes, forms and staffing
20 models; (e) Improved chronic care systems -- for example, the number of inmates whose
21 asthma deaths that were deemed to be preventable by the Receiver went from 6 in 2006
22 to 0 in 2007; (f) Improved emergency response plans and systems; (g) Improved
23 provision of and access to specialty care and hospital services; (h) Improved medical
24 clinical leadership and management; (i) Improved peer review and death review
25 programs; (j) Establishment of a comprehensive, safe, and efficient pharmacy program --
26 including continued development of the drug formulary and the rollout of a computerized
27 pharmacy operating system designed to improve medication management in CDCR
28 institutions; (k) Establishing standardized health records practices -- ultimately leading to

1 the use of electronic medical records; and (l) Establishing effective radiology and
2 laboratory services. (Defs.' Tr. Ex. 1100 – Receiver's Ninth Quarterly Report, 09/15/08,
3 *Plata Dock*. No. 1472 at 8-12, 15-24, 33-34, 40-41, 51-58.)

4 14. The *Plata* Receiver has identified overcrowding as a significant barrier to
5 quality care, but through the close of evidence had never opined that overcrowding is the
6 primary barrier to the delivery of better medical care to California's inmate patients.
7 (See, e.g., Plan of Action, Turnaround Plan of Action, Shansky Dep. 12/10/07 at 65:20-
8 24.) He has stated that a prisoner release order will not cure problems in the delivery of
9 medical care. (Ex. 1092 - Receiver's Overcrowding Report, May 15, 2007, *Plata Dock*.
10 No. 673 at 42:11-43:1.) The Receiver has noted that failure is not an option and that
11 CDCR's medical delivery system will be raised to constitutional levels even with
12 overcrowding conditions. (*Id.* at 41:13-25.)

13 15. Thomas Hoffman, CDCR's Director of the Division of Parole Operations,
14 testified that the California Static Risk Assessment used by the Department shows that
15 approximately 17-22% of the property, drug, non-violent, and non-sex offenders with
16 California prisons present a low risk to reoffend. (Trial Tr., 12/9/08 at 1749:14-25.) The
17 risk tool further shows that of the low risk group that will reoffend, approximately 4% will
18 commit a violent crime. (*Id.* at 1751:24-1752:3.) The upshot of this is that any prisoner
19 release, even one strictly limited to low risk offenders, if possible, will likely result in the
20 commission of violent crimes in the community that would not have otherwise occurred if
21 the offenders remained incarcerated.

22 **(b) Expert Testimony Regarding Primary Cause and Medical Care**

23 16. Many of Plaintiffs' experts' reports were drafted by Plaintiffs' counsel. (Trial
24 Trs., 11/18/08 at 157:19-23; 11/19/08 at 279:7-23; 390:24-391:14; 11/20/08 at 471:12-
25 17; 473:4-6.) Many of Plaintiffs' experts, with the exception of Dr. Shansky, were
26 experienced in overall prison administration, but did not have specific experience with
27 correctional medical care. (Trial Trs., 11/18/08 at 154:5-19; 155:12-15; 155:8-11;
28 11/19/08 at 200:6-11; 274:12-275:1; 387:2-4; 11/20/08 at 320:21-24; 11/9/07 Expert

1 Report at 1.) Several of Plaintiffs' correctional experts — Wayne Scott, Jeffrey Beard,
2 Joseph Lehman, Jeanne Woodford, and Craig Haney — are not experienced in
3 correctional medical care itself. Mr. Haney's testimony focused on *Coleman* issues. No
4 expert proffered by Plaintiffs has any evidence that overcrowding has caused an
5 adverse medical consequence to any California inmate patient. (Trial Tr., 11/18/08, at
6 174:18-23; 11/19/08 at 247:40-44; 285:4-20; 398:8-400:8; 11/20/08 at 480:3-481:3.)

7 **(i) Wayne Scott**

8 17. Wayne Scott is the former head of the Texas Department of Corrections.
9 (Trial Tr., 11/18/08, at 138:24-139:10.) He testified that he has no medical training and
10 has no experience providing medical care to inmates. (*Id.* at 154:5-19; 155:8-15.) Mr.
11 Scott did not visit each one of CDCR's 33 adult prisons before arriving at his opinions.
12 (*Id.* at 155:8-11.) Mr. Scott testified that Plaintiffs' counsel drafted his report. (*Id.* at
13 157:19-23.) Mr. Scott admitted, as he must, that he does not know the quality of medical
14 care at CDCR's prisons as of August 2008. (*Id.* at 162:15-20.)

15 18. Mr. Scott testified that he did not even evaluate the numbers of medical
16 clinicians providing medical care to inmate patients in CDCR's prisons. (*Id.* at 176:4-
17 177:13.) Mr. Scott testified that he does not know the numbers of correctional officers or
18 the vacancy rate for correctional officers as of August 2008. (*Id.* at 178:17-179:3.) Mr.
19 Scott testified that he only evaluated correctional officer staffing — even though
20 correctional officer staffing is only one part of the delivery of medical care to inmate
21 patients. Mr. Scott did not know of a single inmate in California's prisons who suffered
22 an adverse medical or mental health consequence as a result of overcrowding. (*Id.* at
23 174:18-23; 175:2-15.)

24 **(ii) Jeffrey Beard**

25 19. Jeffrey Beard is the head of the Pennsylvania Department of Corrections.
26 (Trial Tr., 11/19/08 at 200:15-18.) He is not medically trained and has never been a
27 clinical provider of medical care. (*Id.* at 233:12-14.) Secretary Beard testified that he
28 never evaluated the deficiencies in California's medical or mental health care delivery

1 first report. (Trial Tr., at 390:24-391:14.) Ms. Woodford testified that she has no
2 knowledge of any CDCR inmate becoming sick or being denied medical or mental health
3 care due to a lockdown or overcrowding. (*Id.* at 403:21-404:15.)

4 (v) **Ronald Shansky, M.D.**

5 23. Plaintiffs' sole correctional medical expert, Dr. Shansky, also testified that
6 he did not draft his initial report -- Plaintiffs' counsel did. (Trial Tr., 11/20/08 at 471:12-
7 17; 473:4-6.) Dr. Shansky testified about the numerous improvements in the delivery of
8 medical care to California's inmate patients. He testified that there have been dramatic
9 improvements in staffing. He acknowledged that CDCR's physician staffing has
10 increased dramatically, and is within 5% of the Receiver's goal to fill 90% of physician
11 positions. Likewise, staffing of registered nurses has increased and is now within 2% of
12 the Receiver's statewide goal to fill 90% of nursing positions. He noted that these
13 dramatic staffing increases have undoubtedly led to better care. (*Id.* at 445:7-446:14;
14 447:9-448:5.)

15 24. Dr. Shansky (like Defendants' correctional medical expert Dr. Thomas)
16 also testified that culture is important to the delivery of quality medical care. (*Id.* at
17 465:22-466:5.) Dr. Shansky noted that it appears that CDCR's culture is different and
18 that there is better coordination between medical and custody staff -- again leading to
19 better care than when he was a consultant for the Defendants in *Plata*. (*Id.* at 449:21-
20 22.)

21 25. Dr. Shansky testified that effective peer review and death review programs
22 are key to improved care and that during the Receivership, these important quality
23 control devices have improved. (*Id.* at 450:5-12; 454:21-455:12; Dep. of Ronald
24 Shansky, 12/10/07 at 117:12-118:2.) Dr. Shansky testified that the number of alleged
25 preventable asthma deaths went from 6 in 2006 to 0 in 2007. (Trial Tr., 11/20/08 at
26 450:20-451:2.) He testified that the number of alleged preventable deaths went from 18
27 in 2006 to 3 in 2007 and that deaths have trended down in the last 10 quarters. (*Id.* at
28 454:21-455:12; 486:16-22; 487:2-5; Shansky Dep. at 74:7:16.)

1 26. Dr. Shansky stated that many barriers to better care can be accomplished
2 without a prisoner release order by increasing staffing, improving medical records,
3 improving information technology, and implementing health care access teams -- to
4 name just of the few improvements occurring or planned. (Trial Tr., 11/20/08 at 457:1-
5 13; 458:11-23; 468:22-469:6; 478:20-22; 479:11-16.)

6 27. Dr. Shansky testified that he is aware of no outbreaks of disease in the
7 proceeding years caused by the use of non-traditional beds or overcrowding. (*Id.* at
8 474:23-475:6.)

9 28. Dr. Shansky testified that CDCR could release 40,000 inmates and it would
10 not solve the deficiencies in medical care. He stated that the State would still need to
11 address the other interrelated components involved in the delivery of quality medical
12 care, like staffing, medical escorts, medical records, and medication management, in
13 order to improve medical care. (*Id.* at 483:7-18.)

14 29. Dr. Shansky testified at his deposition that he could not opine on whether
15 overcrowding is the primary cause of the unconstitutional delivery of medical care at
16 each one of California's prisons. (*Id.* at 484:1-485:13.)

17 **(vi) David Thomas, M.D.**

18 30. Defendants' expert, Dr. Thomas, is a practicing physician and has been
19 practicing for just under 40 years. He is board certified by the American Board of
20 Ophthalmology. (Trial Tr., 12/3/08 at 1193:6-9.) Dr. Thomas currently is a Professor
21 and Chairman of the Department of Surgery and Professor and Chairman of the Division
22 of Correctional Medicine at Nova Southeastern University. (*Id.* at 1194:4-7.) Dr.
23 Thomas worked for the Florida Department of Corrections for nine years and held
24 several positions at the Department, ultimately becoming Assistant Secretary for Health
25 Services. (*Id.* at 1195:13-1196:9.) Dr. Thomas has also served as a surveyor for the
26 National Commission of Correctional Healthcare, has been the Chairman and a member
27 of the Commission on Accreditation in Corrections, and is currently on the Board of
28 Governors of the American Correctional Association. (*Id.* at 1199:13-22.)

1 31. Dr. Thomas explained that private hospitals also experience similar
2 challenges as experienced in the correctional healthcare setting. Preventable death is a
3 death that occurs because of a failure of the medical system or an individual provider. It
4 is a death that should not have happened. Preventable deaths occur in private medical
5 practice at a rate of between 44,000 to 98,000 annually. (*Id.* at 1204:23-1206:5.)
6 Outbreaks of infectious disease, particularly of MRSA, occur in private hospitals. (*Id.* at
7 1206:10-24.)

8 32. Dr. Thomas noted several improvements made during the Receivership,
9 including significant improvements to improve the quality of care, and establishing
10 chronic illness clinics with defined intervals and regular appointments with an integrated
11 pharmacy. (*Id.* at 1207:20-1208:8.) The culture has started to improve. CDCR staff are
12 empowered and desire to provide better care. (*Id.* at 1210:1216:20.)

13 33. There are several other factors besides overcrowding that impact whether
14 healthcare is being adequately delivered in correctional settings. These factors are
15 being addressed and improved despite population pressures. (*Id.* at 1209:24-1210:3.)
16 The single most important factor in the delivery of adequate healthcare is the culture of
17 the system. (*Id.* at 1212:16-1216:20.) Constitutionally adequate medical care can be
18 provided in CDCR institutions despite population pressures. (*Id.* at 1216:21-3.) While
19 there may be some connection between overcrowding and medical care, overcrowding
20 is not the primary cause of the problems within CDCR. Even after addressing
21 overcrowding issues, there are myriad of additional issues that must be addressed to
22 achieve a constitutionally adequate medical system. (*Id.* at 1217:4-1218:16.)

23 34. Dr. Thomas explained that other systems, such as the Florida system
24 which he directed, have created medical classification systems that assign inmates to
25 prisons based upon an evaluation of the intensity of their medical needs, so that inmates
26 with more intensive medical needs are matched up with facilities with the resources to
27 better meet those needs. (*Id.* at 1196:10-1197:13.)

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(c) Factual Conclusions

35. No evidence was presented that Plaintiffs' requested relief of a reduction in the prison population by 52,000 inmates over two years and the imposition of a cap at 130% design capacity is necessary to remedy the constitutional violations with respect to medical care or that more narrowly drawn and less intrusive relief does not exist.

36. This Court finds as a factual matter that crowding is not the primary cause of the constitutional violations in the delivery of medical care in California's prisons and that neither a release of prisoners nor a population cap will remedy the constitutional violations with respect to the delivery of medical care.

37. This Court further finds as a factual matter that relief other than a prisoner release order can remedy the constitutional violations with respect to the delivery of medical and mental health care to California's prison inmates. Specifically, the delivery of medical care will continue to improve, even at current population levels.

(3) Coleman

(a) Improvements in the Mental Health Care Delivery System

(i) Enhancement of Screening, Diagnosis and Treatment Procedures

38. Since 1997, Defendants have used a uniform set of policies and procedures to provide care to mentally ill inmates. (Trial Aff. of Robin Dezember, 10/30/08, (Dezember Aff.) *Coleman* Dock. No. 3228 at ¶ 15.) Those policies and procedures, known as the Program Guide, were provisionally approved by the *Coleman* Court.

39. After years of discussion and negotiation between the parties and the *Coleman* Special Master, that set of provisional policies matured into a final set of policies and procedures approved by the *Coleman* Court in March 2006. (Dezember Aff., ¶¶ 16-17; see Defs.' Trial Ex. 1041 - *Coleman* Court Order, filed 3/3/06, *Coleman* Dock. No. 1773; Defs' Trial Ex. 1147- 2006 Program Guide.)

40. According to the *Coleman* Special Master, the court-approved 2006

1 Revised Program Guide for mental health services provides for enhanced mental health
2 care standards in all CDCR institutions. (Defs.' Trial Ex. 1109 - *Coleman* Special
3 Master's 17th Report, Part A, 5/4/07, *Coleman* Dock. No. 2274 at internal pp. 3-4;
4 *Dezember* Aff. ¶ 18.) Defendants have implemented those standards statewide.
5 (*Dezember* Aff. ¶ 23; Trial Tr., 12/2/08, at 846:2-10.) The *Coleman* Special Master
6 observed in September 2008 that at least several institutions are in "substantial
7 compliance" with them. (Trial Tr., 12/2/08, at 846:2-10; Defs.' Trial Ex. 1112, *Coleman*
8 Special Master's 20th Monitoring Report, 9/12/08, *Coleman* Dock. No. 3029, internal p.
9 6.)

10 41. CDCR now identifies and classifies a significantly greater proportion of its
11 inmates as belonging to the *Coleman* class than it did when the *Coleman* litigation
12 began. In August 2008, CDCR classified 20% of its inmates as severely mentally ill, up
13 from 7.9% in 1994. (*Dezember* Aff., 10/30/08, *Plata* Dock. No. 1715, ¶¶ 70, 71.)

14 42. The treatment programs or 'levels of care' provided by Defendants have
15 increased in size and in specificity. In 1995, the trial court found the following levels of
16 care existed: inpatient hospital care, Enhanced Outpatient Program care, mental health
17 crisis beds (provided on an "informal" basis within each institution, depending upon
18 available resources) and outpatient care (provided on an "informal" basis and primarily
19 limited to medication only, with psychological services dependant upon the availability of
20 staff). (Defs.' Trial Ex. 1273 -*Coleman* F&Rs, 6/6/94 at 43-44; see also *Dezember* Aff., ¶
21 70.)

22 43. Under the Revised Program Guide, Defendants now provide distinct levels
23 of care and programs reflecting the mental health care and housing needs of *Coleman*
24 class members. A single level of care provides for the delivery of services within general
25 population housing: the Correctional Clinical Case Management System (CCCMS) level.
26 The Correctional Clinical Case Management System delivers care to inmates able to
27 function well in the General Population with some mental health treatment. (*Dezember*
28 Aff., ¶¶ 20, 71.)

1 44. In contrast, Defendants' six other mental health levels of care involve the
2 separation of mentally ill inmates from the general population as part of their treatment.
3 The Enhanced Outpatient Program (EOP) involves the segregation from the general
4 population of those mentally ill inmates who are receiving significant services in order to
5 function well. The Psychiatric Services Unit (PSU) involves the delivery of Enhanced
6 Outpatient Services to those mentally ill inmates who are receiving significant services in
7 order to function well, and who are serving a security housing unit term. Inmates within
8 Mental Health Crisis Beds receive short-term, intensive mental health care services,
9 generally not to exceed 10 days. Inpatient mental health care, at acute and intermediate
10 levels, is provided by Department of Mental Health staff at state hospitals and at CDCR
11 sites. The Day Treatment Program, operated by the DMH at the California Medical
12 Facility, provides step-down outpatient care for patients moving from intermediate to
13 Enhanced Outpatient Program level of care. (Dezember Aff., ¶¶ 20, 71.)

14 (ii) **Mental Health Bed Increases**

15 45. In 1994, the CDCR mental health care system was limited to a few
16 institutions and involved some 3,200 designated mental health care beds. (Defs.' Trial
17 Ex. 1273 - *Coleman* F&Rs, 6/6/94, at 43-44; Dezember Aff., ¶ 70.)

18 46. Now, the CDCR mental health care system extends to each CDCR
19 institution across the State and involves some 30,382 beds across all levels of care.
20 (Dezember Aff., ¶ 75; Defs.' Trial Ex. 1247 - Chart of CDCR Facilities.)

21 47. Inpatient hospital care has expanded beyond Atascadero State Hospital
22 and California Medical Facility. (Dezember Aff., ¶ 71; 14; see also Def. Tr. Ex. 1247 -
23 Map of CDCR Institutions; Defs.' Tr. Ex. 1243 - Map of DMH Institutions.) There are now
24 three state mental hospitals and two psychiatric programs available for the inpatient
25 care. (Trial Tr., 11/21/08, at 758:13-22; 759:9-760: 5.) These facilities include
26 Atascadero, Coalinga, and Patton State Hospitals and psychiatric programs at CDCR's
27 California Medical Facility and Salinas Valley State Prison institutions. (Trial. Aff. of
28 Cynthia Radavsky, 10/30/08 (Radavsky Aff.) *Coleman* Dock. No. 3160 at ¶ 14; Trial Tr.,

1 11/21/08, at 758:13-22, 759:9-760:5.)

2 48. The design of the CDCR prisons and DMH hospitals has challenged
3 Defendants' mental health care system. (Defs.' Trial Ex. 1292 - *Coleman* Special
4 Master's May 31, 2007 Response to Court's May 17, 2007 Request for Information, filed
5 5/31/07, *Coleman* Dock. 2253, at 5, 8; *Radavsky Aff.*, ¶ 21.)

6 49. That challenge has been met, in part, by the adoption and implementation
7 of a validated mental health forecasting methodology provided by Navigant Forecasting.
8 This methodology allows CDCR to project the number of and type of mental health care
9 beds required to provide adequate mental health care services to its mentally ill inmates
10 over the next five years. (*Dezember Aff.*, ¶ 82, 83; Defs.' Trial Ex. 1139, Defs.' August
11 2007 Mental Health Bed Plan.)

12 50. The challenge has also been met by retrofitting certain interior spaces into
13 mental health care space. (Trial Tr., 12/2/08, at 839:13-20; Defs.' Trial Ex. 1292,
14 *Coleman* Special Master's Response to Request for Information, filed 5/31/07, p. 6.)

15 51. For instance, general population cells have been converted into clinician
16 offices and mental health care housing. (Trial Tr., 12/2/08 at 841:13-842:5.) The hiring
17 of staff has progressed during these arrangements. (*Id.* at 859:7-16.) These offices and
18 housing spaces have enabled adequate care to be provided. (*Id.* at 842:7-9.)

19 52. A case in point is the California Men's Colony locked observation unit. This
20 facility was unable to meet certain licensure requirements yet, by *Coleman* court order,
21 was directed to provide mental health crisis bed care because adequate care could be
22 provided in that facility. (Trial Tr., 12/2/08 at 842:19- 843:5; 868:23-869:11; Defs.' Trial
23 Ex. 1044, *Coleman* Ct. Order, filed 5/2/06, *Coleman* Dock. No. 1800.)

24 53. Whether by retrofitted space or by new construction over the years,
25 Defendants have systematically added mental health beds at individual institutions, with
26 a resulting decrease in wait lists for mental health beds. The activation of 64 Psychiatric
27 Services Unit beds in 2008 resulted in a decrease in the waiting list from 79 to 22.
28 Likewise, the activation of 50 Mental Health Crisis beds in 2008 contributed to a

1 decrease in the waiting list for such beds from 301 to 16. Kern Valley State Prison
2 recently added 96 sensitive need EOP beds, which allowed EOP patients to be moved
3 from administrative segregation to those beds. (Dezember Aff., ¶ 74; Defs.' Trial Ex.
4 1186 - Kern Valley State Prison Activation Mem., Aug. 2008.)

5 54. Correctional Clinical Case Management System Beds: The vast majority
6 of the mentally ill inmates receiving Correctional Clinical Case Management Services are
7 housed in appropriate beds. (Dezember Aff., ¶ 78; Trial Tr., 12/2/08 at 909:20-910:1-
8 11.)

9 55. To the extent non-traditional space has been used to house class
10 members, the *Coleman* Special Master has indicated that it has no impact on CDCR's
11 ability to provide constitutionally adequate mental health care to CCCMS inmates.
12 (Trial Tr., 12/2/08 at 921:16-922:1.)

13 56. Even so, the use of non-traditional beds has declined from 19,618 in
14 August 2007 to 14,359 (13,467 male and 802 female) in August 2008. (Kernan Aff., ¶ 4,
15 1:23-26; ¶14, 5:17-23; Defs.' Trial Ex. 1303 - Master Bed Roster; Defs.' Trial Ex. 1304 -
16 Institution Activation Schedule.)

17 57. Enhanced Outpatient Beds: While awaiting the construction of additional
18 Enhanced Outpatient Program beds, Defendants have addressed the wait lists for
19 Enhanced Outpatient Program beds by, with the *Coleman* Court's approval, bringing that
20 level of care to the Reception Center patients while they wait for transfer to such a bed in
21 a mainline institution. (Dezember Aff., ¶ 79.) Defendants' expert, Ira Packer, has stated
22 that the Enhanced Outpatient Program care provided in reception areas is improving.
23 (Defs.' Trial Ex. 1020, Packer Report, 8/15/08, at 3.)

24 58. Inpatient Beds: Defendants have already undertaken efforts to create
25 more inpatient beds. Defendants already converted two units at California Medical
26 Facility in 2007 into 66 intermediate care beds for Level III and Level IV inmates. (Trial
27 Aff. Dezember, ¶ 73; Defs.' Trial Ex. 1111 - *Coleman* Special Master's 19th Round
28 Report, filed July 25, 2008, *Coleman* Dock. 2895 at 20.) Funding for another 64-bed

1 intermediate care facility at California Medical Facility is now being sought. (Trial Tr.,
2 11/21/08 at 801:14-23, Trial Tr., 12/2/08 at 848:15-24.) Likewise, Defendants added 112
3 inpatient intermediate care beds for high custody inmates to Salinas Valley State Prison
4 in 2006, and plan to activate an additional 64 inpatient beds at the same facility in 2009.
5 (Dezember Aff., ¶ 73; Defs.' Trial Ex. 1109, *Coleman* Special Master's 17th Report, Part
6 A, filed February 9, 2007, 2007, *Coleman* Dock. No. 2138, at 114; Trial Tr. 11/23/08 at
7 762:23-763:11; 793:22-794:21; Defs.' Trial Ex. 1043 - *Coleman* Order, filed 3/3/06,
8 *Coleman* Dock. No. 1772.) A 50-bed mental health crisis unit at California Men's Colony
9 is also planned. (Trial Tr. 12/2/08 at 848:15-24; Defs.' Trial Ex. 1050, *Coleman* Order,
10 filed 3/27/07, *Coleman* Dock. No. 2173.)

11 59. Both the *Coleman* court and Defendants recognize the construction of
12 additional secure facilities for the care of high-custody inmates requiring inpatient care
13 will remediate the wait list for such inpatient care. (Radavsky Aff., ¶ 23-25, 29; Trial Tr.
14 11/21/08, 762:16-764:5; Defs.' Trial Ex. 1043 - *Coleman* Order, filed 3/3/06, *Coleman*
15 Dock. No. 1772; Defs.' Trial Ex. 1296 - *Coleman* Order, filed 5/2/06, *Coleman* Dock. No.
16 1800.)

17 **(iii) Mental Health Staffing Increases**

18 60. CDCR has increased its number of mental health clinicians, including
19 psychiatrists, psychologists, and social workers, from 314 positions in 1994 to 2396
20 positions today. (Dezember Aff. ¶ 48; see Defs.' Ex. 1269 - Chart of 1994 Mental Health
21 Care Positions; Defs.' Trial Ex. 1235 - CDCR 2008 Mental Health Care Positions; Defs.'
22 Trial Ex. 1246, CDCR Chart of Mental Health Positions.) In his September 2008 report,
23 the *Coleman* Special Master noted that at least four CDCR institutions have nearly all of
24 the mental health clinicians they need. (Trial Tr., 12/2/08 at 928:12-929:22; Defs.' Trial
25 Ex. 1112 - *Coleman* Special Master's 20th Monitoring Report, filed 9/12/08, *Coleman*
26 Dock. No. 3029 at 24, 70, 259, 306, 329, 330.) The DMH facilities that serve CDCR
27 inmates now have as many psychiatrists as they need. (Trial Tr., 11/21/08, at 814:4-10.)

28 61. Both CDCR and DMH have used new pay parity packages to drive

1 stronger recruiting strategies for mental health clinical staff. (Dezember Aff., ¶¶ 57, 58;
2 Radavsky Aff., ¶ 28; Trial Tr., 11/21/08 at 812:11-813:13.) Further, CDCR developed
3 and, in conjunction, with the Special Master's staff, finalized a workload methodology to
4 measure mental health staffing needs biannually. (Dezember Aff., ¶ 65.)

5 62. CDCR now employs approximately 2400 correctional officers in dedicated
6 "access to care" units to provide escort for inmates to their medical and mental health
7 appointments. (Trial Tr., 12/10/08, at 1894:20-1895:6.)

8 (iv) Suicide Prevention Program Improvements

9 63. At the underlying trial, the *Coleman* court found that Defendants' 1990
10 suicide prevention program for CDCR institutions would have been sufficient if
11 adequately staffed. (Dezember Aff. ¶ 30; Defs.' Trial Ex. 1273 - *Coleman* F & R, 6/6/94,
12 *Coleman* Dock. No. 547 at 75:1-6.) Defendants have significantly increased mental
13 health staffing since the underlying trial. (Dezember Aff., ¶ 48; see Defs.' Trial Ex. 1269
14 - Chart of 1994 Mental Health Care Positions; Defs.' Trial Ex. 1235.)

15 64. The *Coleman* court found in 2005 that suicides occurred at higher rates
16 within administrative segregation areas. CDCR worked with the *Coleman* Special
17 Master and Plaintiffs' counsel to develop improved suicide prevention strategies for
18 administrative segregation areas. The *Coleman* court approved and Defendants have
19 implemented a multidisciplinary and comprehensive approach to reducing suicides.
20 (Dezember Aff., ¶¶ 32-41; see Defs.' Trial Ex. 1279 - *Coleman* Order, 6/9/05, *Coleman*
21 Dock. No. 1668; Defs.' Trial Ex. 1280 - *Coleman* Stipulated Order, 2/13/06, *Coleman*
22 Dock. No. 1760; Defs.' Trial Ex. 1282 - *Coleman* Order, 6/8/06, *Coleman* Dock. No. 1830;
23 Defs.' Trial Ex. 1311 - *Coleman* Stipulated Order, 7/5/06, *Coleman* Dock. No. 1872.)

24 65. The performance and efficacy of these suicide prevention programs is
25 measured by CDCR's internal investigations and analyses of any inmate suicides within
26 its institutions. (Dezember Aff. ¶¶ 35-36.)

27 (v) Mental Health Records System

28 66. Defendants are continuing to work to improve CDCR's mental health

1 recordkeeping systems. According to current estimates, new information technology will
2 be implemented within 18-24 months. (Dezember Aff. ¶¶ 90-91.)

3 **(vi) Pharmacy System**

4 67. The Coordinated Courts vested the *Plata* Receiver with leadership
5 responsibility over the pharmacy function of the medical and mental health services
6 delivery system. (Defs.' Trial Ex. 1299, Coordinated Cts' Order, 6/28/07.) The *Plata*
7 Receiver has contracted with Maxor National Pharmacy Services Corporation to install
8 the necessary pharmacy services in each institution. (*Id.*)

9 68. The *Coleman* Special Master has already found, at least at one institution,
10 that "Pharmacy operations were transformed by a 100 percent increase in staffing and
11 installation of Maxor National Pharmacy Services Corporation's (Maxor's) new
12 management information system." (Defs.' Trial Ex. 1112, *Coleman* Special Master's
13 20th Monitoring Report, filed 9/12/08, *Coleman* Dock. No. 3029 at 58.)

14 69. The efforts to improve pharmacy served to improve the medication
15 management of *Coleman* class members. (Dezember Aff., ¶ 92.)

16 **(b) The Mental Health Care System and the Overcrowding of CDCR**

17 70. The *Coleman* Special Master has never recommended reducing inmate
18 population in order to improve mental health care in CDCR institutions. Instead, he has
19 stated that appropriate and uniform policies and procedures, bed availability, staffing
20 levels, and suicide prevention are the components to a constitutionally adequate mental
21 health care system. (Defs.' Trial Ex. 1108 - Summary of *Coleman* Special Master
22 Reports.)

23 71. Most *Coleman* class members are not housed in overcrowded conditions:

24 a. According to both CDCR data and Plaintiffs' evidence, the vast
25 majority of CCCMS outpatient inmates are housed in appropriate beds, not in "non-
26 traditional" housing areas. (Dezember Aff., ¶ 78; Defs.' Trial Ex. 1252 - CDCR Chart of
27 Non-Traditional Beds; Trial Tr., 12/2/08, at 909:20-910:11.) Even when some CCCMS
28 inmates have been housed in non-traditional beds, neither the *Coleman* Special Master

1 nor the *Coleman* court has ever criticized CDCR for such placement. (Trial Tr., 12/2/08,
2 at 921:16-922:1.)

3 b. Inmates receiving EOP care are not housed in non-traditional
4 housing areas, and they are separated from the general inmate population. They are
5 provided EOP care even when separately housed in Secured Housing Units for
6 disciplinary reasons. (Dezember Aff., ¶¶ 20, 20b, 76.)

7 c. Inmates receiving inpatient services are not housed in non-
8 traditional housing areas, and they are separated from the general inmate population.
9 (See Defs.' Tr. Ex. 1295 - Map of DMH Institutions; Radavsky Aff., ¶ 14, 6:6-8; Trial Tr.,
10 11/21/08 at 761:15-18.) These patients dine separately, they are treated in separate
11 therapeutic environments, they participate in separate individual and therapeutic groups,
12 and they are provided separate times for yard and recreation apart from the general
13 population. (Trial Tr., 11/21/08, at 761:4-14; Radavsky Aff., ¶ 17, 7:4-16.) These
14 patients are not housed with non-patient inmates in traditional or even non-traditional
15 housing areas, such as dayrooms and gymnasiums. (*Id.*)

16 The inpatient hospital care provided by DMH at Atascadero State Hospital and
17 Patton State Hospital is licensed under state regulations and accredited by the national
18 Joint Commission on the Accreditation of Healthcare Organizations. (Radavsky Aff., ¶
19 18, 7:26-17.) Coalinga State Hospital is currently licensed and working toward Joint
20 Commission accreditation. (*Id.* at ¶ 18, 7:26-17.) Under these accreditation standards,
21 the patients are provided either single rooms or two-person or four-person dormitories,
22 depending on their treatment needs and acuity level, in areas designed for patient
23 housing. (*Id.* at ¶ 18, 7:26-17.) No patients are housed in non-traditional housing areas,
24 such as gymnasiums or dayrooms, within DMH hospitals. (*Id.* at ¶ 18, 7:26-17; Trial Tr.,
25 11/21/08, 761:15-18.) The undisputed evidence shows that the overall population of
26 inmates within CDCR institutions has not caused any crowding of CDCR patients within
27 DMH programs at CDCR sites or within DMH hospitals.

28 As a result, whether housed at a CDCR facility or a state mental hospital,

1 *Coleman* class members receiving inpatient care are not subjected to overcrowded
2 conditions. (Radavsky Aff., ¶ 17, 7:4-16; Trial Tr., 12/21/08, 768:10-12.)

3 d. Building additional high-security mental health facilities will remedy
4 any existing shortage of inpatient beds for high-custody inmates. (Radavsky Aff., ¶¶ 21,
5 23-25, 29; Trial Tr., 11/21/08, 762:16-22; Defs.' Trial Ex. 1043 - *Coleman* Order, 3/3/06,
6 *Coleman* Dock. No. 1042.)

7 72. Therapeutic modules have been designed and approved by the *Coleman*
8 Special Master's team to enable high-custody inmates to participate in individual and
9 group therapy without risk to staff and other patients. (Trial Tr., 12/2/08 at 927:13-
10 928:5.)

11 73. The use of holding cells for a short-term monitoring of an inmate pending
12 transfer to a mental health crisis bed has been found appropriate by the *Coleman*
13 Special Master. (Trial Tr., 12/2/08 at 926:7-927:11.)

14 74. Pay inequity and workload imbalances, not population levels, have caused
15 mental health staffing shortfalls:

16 a. The *Coleman* Special Master has stated that a failure to evenly
17 distribute pay and to use a validated methodology for determining staffing levels caused
18 CDCR's mental health clinician staffing shortfalls. (Defs.' Trial Ex. 1305, *Coleman*
19 Special Master's 16th Monitoring Report, 12/14/06; *Coleman* Dock. No. 2081 at pp. 430-
20 432.)

21 b. After developing pay parity packages and a workload instrument to
22 distribute work according to need, CDCR has achieved nearly full staffing of at least four
23 institutions and significantly improved staffing at other institutions, and DMH has
24 sufficient psychiatrist staff to serve CDCR inmates—despite current population levels.
25 (Dezember Aff., ¶¶ 55-65; Radavsky Aff., ¶¶ 27-28; Trial Tr., 11/21/08 at 814:4-10; Trial
26 Tr., 12/2/08 at 897:15-898:2, 901:22-902:3, 928:12-929:22; Defs.' Trial Ex. 1112,
27 *Coleman* Special Master's 20th Monitoring Report, filed 9/12/08, *Coleman* Dock. No.
28 3029, pp. 24, 30, 40, 51, 55, 70, 222, 259, 286, 306.)

1 75. No clear evidence links inmate suicides to overpopulation:

2 a. Suicide rates within CDCR vary according to a complex interplay of
3 multiple factors, particularly demographic factors.. (Defs.' Trial Ex. 1281 - Patterson &
4 Hughes, Review of Completed Suicides in the CDCR, 1999 to 2004, Psychiatric
5 Services (June 2008) Volume 59, Number 6, p. 677; see also Trial Tr., 12/3/08 at
6 1287:6-16 (excerpted testimony from Christopher Mumola showing the risk of suicide
7 among inmates within correctional institutions varied by demographic factors.)

8 b. The *Coleman* Special Master has observed that suicides in CDCR
9 facilities occur most often among inmates celled by themselves, not those housed in
10 overcrowded conditions. (Defs.' Trial Ex. 1292 - *Coleman* Special Master's Report on
11 Suicides Completed Within CDCR in Calendar Year 2004, 11/26/07, *Coleman* Dock.
12 Nos. 2566 at 4, 13; Defs.' Trial Ex. 1268, *Coleman* Special Master's Plan to Prevent
13 Suicides in Administrative Segregation, 12/18/06, *Coleman* Dock. 2084, at 1.) Court
14 monitors found that 73% of suicides occurred in single cells, most of them in
15 administrative segregation or secure housing units. (Defs.' Trial Ex. 1281 at 678.)

16 **(c) Expert Testimony Regarding Primary Cause and Mental Health Care**

17 76. Plaintiffs' experts, Craig Haney and Pablo Stewart, testified that a
18 population reduction would not remedy the deficiencies in the mental health care
19 system. (Trial Tr. 12/2/08, at 963:24-964:20; Trial Tr. 12/12/08, at 2226:22-2227:10.)
20 Defendants would still have to obtain sufficient staff and sufficient beds to address
21 outstanding deficiencies. (*Id.*)

22 a. Craig Haney, a professor of psychology, was offered as an expert
23 on the psychology of imprisonment and the impact of prison conditions. (Trial Tr.
24 11/19/08, at 292:8-293:9.) He has a doctorate degree in psychology, but is not a
25 licensed psychologist. (Trial Tr. 11/19/08, at 321:1-8) He has a juris doctorate degree,
26 but is not a licensed attorney. (*Id.*) He has never worked in a prison system in any
27 capacity. (Trial Tr. 11/19/08, at 320:15-25.) He did not tour all the CDCR institutions,
28 just eight, and did not tour any DMH hospitals in preparing his opinion in this proceeding.

1 (Trial Tr. 11/19/08, at 299:3-6.) He testified at the underlying trial of the *Coleman* case in
2 1994. (Trial. Tr., 12/2/08, at 961:19-963:1.) Even at that time of his 1994 trial testimony,
3 he found CDCR was overcrowded. (*Id.*) In this proceeding, he agreed that Defendants
4 had created additional levels of care, uniform treatment protocols, and a system of
5 mental health care since 1994. (Trial Tr., 11/19/08, at 321:17-322:16.) In his report and
6 testimony, he explained that a population reduction would not remedy the deficiencies in
7 the mental health care system. (Trial Tr., 11/19/08, at 333:24-345:5; 346:8-347:9;
8 12/2/08, 963:24-964:20.) Additional beds and additional staff would be necessary to
9 remedy the deficiencies. (Trial Tr., 12/2/08, at 963:24-964:20.) He acknowledged that
10 even a correctional system operating at less than capacity could still be deficient if
11 mental health resources were inadequate. (Trial. Tr., 11/19/08, at 333:24-335:5; 12/2/08,
12 964:21-965:4.)

13 b. Pablo Stewart, a professor of psychiatry, was proffered as an expert
14 on prison psychiatry by Plaintiffs. (Trial Tr., 11/18/08, at 64:16-17; 81:24-82:14.) His
15 only experience in a correctional setting occurred some twenty years ago in a local jail,
16 shortly after completing his residency. (Trial Tr., 11/18/08, at 81:24-82:14; 84: 5-13.) He
17 toured only five of the 33 CDCR prisons and toured no DMH hospitals. (Trial Tr.
18 11/18/08, at 64:20-65:14.) He could not identify a specific population level that would
19 remedy the deficiencies in the mental health care system. (Trial Tr., 12/12/08, at
20 2221:10- 23, 2223:16-22.)

21 c. In contrast, former Special Master Keating found, "Even the release
22 of a hundred thousand inmates would likely leave the defendants with a largely
23 unmitigated need to provide intensive mental health services to program populations that
24 would remain undiminished by a reduction of some 19,000 CCCMS [Correctional Clinical
25 Care Management Services] inmates." (Defs.' Trial Ex. 1292, Special Master's Report
26 on Population, 5/31/07, *Coleman* Dock. 2253 p. 15; Trial Tr. 12/2/08 at 929:23-930: 24.)
27 Former Special Master Keating added that the release of 50,000 inmates "would still not
28 raise staffing resources into equilibrium with the mental health caseload needs." (Defs.'

1 Trial Ex. 1292, Special Master's Report on Population, 5/31/07, *Coleman* Dock. 2253 p.
2 15; see also Trial Tr., 12/2/08 at 930:25-931:1-10.) He explained "Clinicians cannot be
3 spread out like butter over the MHSDS [Mental Health Services Delivery System]
4 caseload." (Defs.' Trial Ex. 1292, Special Master's Report on Population, 5/31/07,
5 *Coleman* Dock. 2253 p. 15; see also Trial Tr., 12/2/08 at 931:11-14.)

6 **(d) Factual Conclusions**

7 77. No evidence was presented that Plaintiffs' requested relief of a reduction in
8 the prison population by 52,000 inmates over two years and the imposition of a cap at
9 130% design capacity is necessary to remedy the constitutional violations with respect to
10 mental health care or that more narrowly drawn and less intrusive relief does not exist.

11 78. This Court finds as a factual matter that crowding is not the primary cause
12 of the constitutional violations in the delivery of mental health care in California's prisons
13 and that neither a release of prisoners nor a population cap will remedy the constitutional
14 violations with respect to mental health care.

15 79. This Court further finds as a factual matter that relief other than a prisoner
16 release order will remedy the constitutional violations with respect to the delivery of
17 mental health care to California's prison inmates. Specifically, the evidence shows
18 CDCR has and will continue to improve the delivery of mental health care under the
19 supervision of the *Coleman* Special Master.

20 **B. A Prisoner Release Order Will Have a Significant Adverse Impact on Public
21 Safety and the Operation of Local Criminal Justice Systems.**

22 **(1) California's Current Incarceration Rate and Sentencing Practices**

23 80. California does not incarcerate felons at an unusually high rate. Currently,
24 California sends fewer than 20% of convicted felons to prison - the national average is
25 40%. (*Cate Aff.*, 10/30/2008, *Plata* Dock. No. 1717, *Coleman* Dock. No. 3320 at ¶¶ 23-
26 24.) California's incarceration rate - the number of prison inmates per state residents -
27 is only slightly above the national average. California's incarceration rate is about 470
28 per 100,000. The national average is 445 per 100,000. (*Cate Aff.* ¶ 22, Defs.' Tr. Ex.

1 1257 – Prisoners in 2006 Bulletin, Appendix Table No. 6.)

2 81. California does not keep people in prison longer than average. The
3 average prison sentence imposed in California is 47.2 months and the average amount
4 of time served is 23.9 months. (Cate Aff. ¶ 25.) The average prison sentence imposed
5 nationwide for all state courts is 57 months and the average amount of time served is 32
6 months. (*Id.*; Defs.' Trial Ex. 1221 – State Court Sentencing of Convicted Felons 2004 –
7 Statistical Tables.)

8 82. The increase in the prison population from 1997 to 2007 is almost
9 exclusively made up of an increase in the number of inmates convicted of crimes against
10 persons. (Cate Aff. ¶ 18.) There has been a decrease in the number of drug offenders
11 in California's prisons in the same 10 year period - from 41,459 to 33,738. (Cate Aff. ¶
12 18.)

13 83. According to an article by Ryan Fisher entitled: "Are California's Recidivism
14 Rates Really The Highest In The Nation?," which Plaintiffs' expert Dr. Austin relied upon
15 in forming his opinions, a higher percentage of inmates in California than in other states
16 had 10 or more prior arrests. Moreover, California parolees are more likely to have their
17 minor and major criminal misdeeds detected. (Trial Tr., 12/4/08 at 1468:8-1469:19.)

18 **(2) Relationship of Incarceration Rates to Crime Rates**

19 84. Some researchers, including James Q. Wilson and William Spellman, have
20 indicated that increased incarceration has reduced crime. (Trial Tr., 12/4/08 at 1447:18-
21 1448:2.) Mr. Spellman concluded that 25% of the reduction in violent crime that has
22 occurred in the last 20 years is due to the nationwide increase of the prison population.
23 (Trial Tr., 12/4/08 at 1448:3-1450:23.)

24 85. According to a report by the Washington State Institute for Public Policy
25 entitled "Evidence Based Public Policy Options to Reduce Future Prison Construction,
26 Criminal Justice Costs and Crime Rates," published in October 2006, which Plaintiffs'
27 expert Joseph Lehman cited, a 10 percent increase (or decrease) in the incarceration
28 rate leads to a statistically significant 3.3 percent decrease (or increase) in crime rates.

1 (Trial Tr., 12/10/08 at 2029:15-2032:19; Ex. 1331, at 10.)

2 86. According to Plaintiff's expert, Jeffrey Beard, incarceration rates up to 470
3 per 100,000 can result in a decrease in crime rate. (Trial Tr., 12/5/08, at 1581:4-1583:2.)

4 87. According to Plaintiffs' expert, Dr. Austin, the prisoner release order
5 requested by Plaintiffs would result in a reduction in California's incarceration rate from
6 about 470 per 100,000 to about 350 per 100,000, which would be a reduction of
7 California's incarceration rate by at least 25%. (Trial Tr., 12/4/08, at 1443:2-1434:1.)

8 **(3) Plaintiffs' Population Reduction Proposals**

9 88. Plaintiffs' proposals for how to reduce California's prison population are the
10 following:

11 a. Divert potential prisoners from prison to probation by sending even a
12 lower percentage of convicted felons to prison than it already does, which is already less
13 than 1/2 the national average. (Cate Aff., 10/30/2008, *Plata* Dock. No. 1717, *Coleman*
14 Dock. No. 3320 at ¶¶ 23-24.) Dr. Austin initially estimated that 35% of those diverted
15 from prison to parole or probation would be rearrested within 12 months. (Austin Report,
16 8/15/08, p. 40, Table 10.) Dr. Austin later revised that percentage to 50%. (Austin
17 Report, 8/27/08, ¶¶ 10-12; Trial Tr., 12/4/08, at 1504:12-1506:24.) Dr. Austin estimated
18 that this proposal would result in a CDCR prisoner reduction of 12,147 inmates. (Austin
19 Report, 8/27/08, Table 10; Trial Tr., 12/4/08 at 1505:7-11.)

20 b. Do not send technical parole violators back to prison. In his report,
21 Dr. Austin claimed that this could result in a population reduction of 6,500 to 9,500 at any
22 given time. (Austin Report, 8/15/08, ¶ 55.) In his trial testimony, Dr. Austin revised the
23 estimated reduction upward to 10,000 to 15,000. (Trial Tr., 12/4/08 at 1435:15-25.) As
24 of June 30, 2008, 43,111 (25.2%) are new admissions, and 19,282 (11.3%) are technical
25 parole violators. (Cate Aff., ¶ 5.) The vast majority - 84% - of inmates sent to prison for
26 technical parole violations are for alleged commission of a new crime. Only 16% of
27 those are purely technical violations. (Cate Aff. ¶ 15.)

28 c. Discharge from parole after 12 good months. Dr. Austin did not

1 estimate the prison population reduction that might result from early discharge from
2 parole. (Trial Tr., 12/5/08 at 1470:8-22.)

3 d. Early release through good time credits. Dr. Austin first estimated
4 that during the initial four month period the shortened length of stay proposal were
5 implemented, approximately 5% of the released prisoners would be re-arrested or
6 returned to prison for a technical violation. (Austin Report, 8/15/08, ¶¶ 95, Table 11.) Dr.
7 Austin later revised that percentage to 50%. (Austin Report, 8/27/08, ¶¶ 8-9, Revised
8 Table 11.). Dr. Austin estimated that a prisoner reduction of 9,500 could be achieved
9 through the increased shortened length of stay proposal. (Austin Report, 8/15/08, ¶ 73.)
10 Dr. Austin testified that CDCR could not achieve a prison population reduction of
11 approximately 50,000 in two years unless it applied the shortened length of stay policy to
12 two strikers or lifers, which would require legislative reform. (Trial Tr., 12/4/08, at
13 1435:15-1436:22; 1439:8-1440:11.)

14 **(4) Impact of Proposed Reduction on Local Criminal Justice Systems
15 and Public Safety**

16 **(a) Additional crimes will occur**

17 89. According to the testimony of Plaintiffs' expert Dr. Austin, additional arrests
18 will occur in connection with the proposals to reduce the prison population. As set forth
19 in Dr. Austin's Table 11, in Los Angeles County alone, 1,398 additional arrests would
20 occur in the first 4 months of implementation of the proposed shortened length of stay
21 policy which would not have otherwise occurred during that period. Dr. Austin could
22 have, but did not calculate statewide numbers. (Trial Tr., 12/4/08, at 1478:17-19.) As
23 set forth in Dr. Austin's Table 10, the diversion of additional offenders from prison to
24 probation or parole would result in a reduction of the CDCR institutional population of
25 12,147 and correlate with 10,412 rearrests statewide within one year. (*Id.* at 1505:7-18.)
26 The number of crimes that occur is greater than the number of arrests. (*Id.* at 1506:21-
27 1507:20.)

28 90. Richard Word, Police Chief, City of Vacaville, testified that increased crime

1 is a better measure of public safety impact than increased arrests. Chief Word testified
2 that criminals "often commit more crimes tha(n) they are caught for." Recent reductions
3 in local police staffing means that arrest numbers may be suppressed because of lack of
4 manpower to make the arrests. (Trial Tr., 12/9/08, at 1848:15-16, 1864:2-5, Word's Aff.,
5 7:26-27.)

6 91. Jerry Dyer, Chief of Police for the City of Fresno, explained that in 2005, as
7 part of a "bridging program," an increased number of parolees were released into the
8 City of Fresno when compared to other years. That year, the City experienced an 11.5%
9 increase in violent crime. In contrast, the violent crime rate dropped in 2002, 2003,
10 2004, 2006, and 2007, when there was no such release. (Trial Tr., 12/12/08, at
11 2329:25-2330:11.)

12 92. Steve Smith, Lieutenant, from the Los Angeles County Sheriff's
13 Department, testified that between approximately 2002 and 2006, approximately 10% of
14 prisoners released early from Los Angeles County jail for population reasons were
15 rearrested, 16 of them for murder. (Trial Tr., 12/9/08 at 1799:2-4, 1811:18-23, 1812:2-4,
16 1825:7-10.)

17 93. Even if the number of crimes committed by prisoners released early from
18 the state prisons would amount to less than 1% of overall arrests, the Riverside County
19 District Attorney, Rodric Pacheco, still believes that those crimes would have a
20 significant detrimental effect on public safety. (*Id.* at 2372:11-2373:12, 2381:22-51,
21 2382:4-11.)

22 **(b) Additional crimes, inmates, probationers, and parolees at the**
23 **local level would further strain limited local resources**

24 94. As detailed below, a reduction in the prison population and an ongoing cap
25 would have a substantial impact on all aspects of the local criminal justice systems. As
26 summarized by Jerry Dyer, the Chief of Police of the Fresno Police Department, a
27 prisoner release order will severely impact the operation of the criminal justice system.
28 Police officers will be hindered because released prisoners not on parole will not be

1 subject to parole searches, thereby hindering the ability of police to investigate and
2 apprehend these individuals for involvement in criminal activity. The District Attorneys
3 do not have adequate resources and as a result will need to prioritize the crimes they
4 prosecute, resulting in less aggressive prosecution of nonviolent crimes and property
5 crimes. The release of inmates will also adversely affect the courts and the jails. The
6 jails and courts do not have the resources and/or space to handle the additional
7 caseload. (Am. Expert Report of Jerry Dyer, 12/12/2008, *Plata* Dock. No. 1937, ¶¶ 26-
8 30.)

9 **(i) Police and jail resources are already strained.**

10 95. Thirty-two of California's Fifty-eight Counties have court-ordered or self-
11 imposed jail population caps or control measures in place. (Trial Tr., 12/11/2008, at
12 2198:3-9.) Additionally, as explained by Chief Word, police departments across
13 California are currently losing officers. (Trial Tr., 12/9/08, at 1856:15-17.)

14 96. Amador County:

15 a. Martin Ryan, the Sheriff/Coroner of Amador County, explained that
16 the Amador County Sheriff's Department is subject to a hiring freeze, and is understaffed
17 in the positions of correctional officer, transfer officer, and sergeant. (Trial Tr., 12/18/08
18 at 2682:12-14, 2685:26-27, 2686:3-4.)

19 b. Amador County jails regularly exceed their rated capacity by 10-
20 15%, and have done so for some time. The County estimates that it will need 165 beds
21 to meet demand by 2010, more than double the current number of beds. (Ryan Aff.,
22 10/30/08, *Plata* Dock. No. 1726, at 5:15-16, Trial Tr., 12/18/08, at 2684:24-25, 2686:15-
23 18.)

24 97. Fresno County: According to Chief Dyer, the Fresno County jail must
25 comply with a federal court consent decree that limits the jail population. The jail's
26 maximum population must not exceed 3,478 prisoners. Currently, the population hovers
27 around 3,300 inmates. Due to budget cuts this fiscal year, the Sheriff has been forced to
28 cut 32 correctional officer positions, which resulted in the closure of a 300 bed satellite
jail facility. The closure of this facility has aggravated jail overcrowding issues at the
main jail. Pursuant to the consent decree, the Sheriff may release or refuse to take
additional prisoners when they reach 90% capacity, and they must release and refuse

1 prisoners when they reach 100% capacity. Any increased levels of arrests requiring
2 booking would pose a severe challenge for the jail, and property offenders would be the
3 first to be released or refused in the face of over-crowding. (Am. Dyer Aff., ¶29.)

4 98. Los Angeles County:

5 a. Alexander Yim, Chief of the Correctional Services Division for Los
6 Angeles County testified that the Los Angeles County jails operate under a court-ordered
7 population cap. The court lowered the cap by 2000 inmates in 2007. As a result of the
8 cap, the County must occasionally release prisoners early in order to keep the jail
9 population under the cap. (Yim Aff., 10/30/08, *Plata Dock*. No. 1725 at 1:14-20, 4:21-
10 28.) Lieutenant Smith explained that in 2007, due to a population cap, Los Angeles
11 County released 9959 pretrial detainees who would not otherwise have been released
12 and 40,830 sentenced jail inmates before their sentences were ended. (Trial Tr.,
13 12/9/08, at 1803:23-1804:1-5.) The Los Angeles County jail system cannot
14 accommodate any additional prisoners “and is struggling to handle the workload it is
15 currently experiencing.” (Yim Aff. ¶ 6:17-19.)

16 b. Los Angeles County currently plans to construct approximately
17 1000-2000 beds. However, the county would need an additional 5000 beds in addition
18 to these 1000-2000 to eliminate the current overcrowding problem. (Trial Tr., 12/9/08, at
19 1802:20-25, 1803:1-2.)

20 c. Los Angeles County is currently unable to provide all of the services
21 required by mentally ill inmates in the County’s jails. (*Id.* at 1817:21-23.)

22 99. Orange County:

23 a. Michael James, Assistant Sheriff, Orange County testified that an
24 influx of state prison releasees into Orange County jails would force the County to
25 sacrifice programming space or to release more inmates early who would not otherwise
qualify for early release. (James Aff., 10/30/08, *Plata Dock*. 1728 at 9:20-28, 10:1-3.)

26 b. Orange County does not have sufficient staff or funding to provide
27 mental health services to all inmates in the County jails who need them. (*Id.* at 5:7-10.)

28 100. Riverside County:

a. As explained by Mr. Pacheco, Riverside County jails are subject to a

1 court-ordered population cap. In 2007, due to lack of capacity in the jail, the County
2 released 3823 pretrial detainees who would not otherwise have been released and 2178
3 sentenced jail inmates before their sentences were ended. (Trial Tr., 12/12/08 at
4 2377:23-22, 2389:22-26, Pacheco Affidavit at 4:13-15, 5:18-20, 24-27, 6:2-4.)

5 b. During the first eight months of 2008, 32% of pre-trial detainees
6 released early from Riverside County jails due to overcrowding were re-arrested before
7 the eight months had ended. (Pacheco Aff., 10/30/08, *Plata Dock*. No. 1709 at 4:18-21.)

8 c. The addition of early released parolees to the Riverside County jail
9 system may require the Sheriff to release detainees accused of violent or sexual crimes
10 pretrial in order to comply with the population cap. (Trial Testimony, 12/12/08, at
11 2389:22-26.)

12 101. San Diego County:

13 a. According to San Diego Commander John Ingrassia, San Diego
14 County jails are subject to a state-court-ordered population cap. In 2007, due to lack of
15 capacity in the jail, the County released 9855 pretrial detainees who would not otherwise
16 have been released and 9007 sentenced jail inmates before their sentences were
17 ended. (Ingrassia Aff., 10/30/08, *Plata Dock*. No. 1673 at 5:7-9, 7:9-11, Ingrassia
18 Stipulation, 12/15/08, *Plata Dock*. No. 1941 at 3:18-28, 4:1-9.)

19 b. The San Diego County Sherriff's Department uses a number of
20 programs and methods to control inmate population and comply with its court-ordered
21 population cap, including early release and diversion programs, sentence reduction and
22 furloughs, and electronic monitoring. (Ingrassia Stipulation, *Plata Dock*. No. 1921
23 12/10/08 at 3:18-28, 4:1-9.) San Diego County has exhausted all available programs
24 and methods for complying with its population cap. There are very few additional low
25 risk inmates in the County's jail who can be released to make room for new arrestees. If
26 new parolees flow into the jail system, the County will be forced to release higher-risk
27 inmates from the jail in order to comply with the cap. (Ingrassia Aff., 6:1-2, 19-24.)

28 102. San Mateo County:

19 a. David Boesch, Assistant County Manager for San Mateo County,
20 and Greg Munks, San Mateo County Sheriff, testified that San Mateo County jails are
21 currently operating around 140% of rated capacity. (Boesch Aff., 10/30/08 *Plata Dock*.
22 No. 1698 at 12:9-10; 12/9/08 Trial Tr. at 1777:6-10, Munks Aff., 10/30/08, *Plata Dock*.
23 1698 at 4:4-5.) The functional capacity of a jail is approximately 5-10% below its rated
24 capacity. The functional capacity represents the capacity needed to properly classify,
25 transfer, and move inmates as needed, and for maintenance. (Trial Tr., 12/9/08, at
26 1776:15-25.)

27 b. Due to overcrowding, San Mateo County jails have had to convert
28 program space to bed space. This limits the jails' ability to operate rehabilitation and
reentry programs in the jails, and reduces jail safety because program facilities do not
have sufficient security to operate as bed space. (Munks Aff., 5:7-12; Trial Tr., 12/19/09,
at 1777:18-25; Munks Report, p. 4.) San Mateo County jails lack space for effective
reentry programs. (Boesch Aff., 12:17.)

c. San Mateo County has made a concerted effort to identify inmates
who are good candidates to be released into sentencing alternative programs and move

1 them into those programs. As a result, among the current County jail population, only an
2 average of about 10-20 inmates at any given time are eligible to be released into such
3 programs. (Trial Tr., 12/9/08, at 1781:24-25, 1782:1-3.) If additional early releasees
4 enter the San Mateo County jail system, the Sheriff may be forced to release county
5 inmates to alternative sentencing programs who would not otherwise qualify for them
6 because of their risk to public safety. This would adversely impact public safety. (Munks
7 Aff., 6:20-24.)

8 d. Inmates released under a prisoner release order, if they were
9 arrested for further crimes, would likely not be eligible for San Mateo County's alternative
10 sentencing programs. (Munks Report, p. 4.) If, due to early release or a population cap,
11 the San Mateo County jails reach maximum capacity, the Sherriff will be forced to
12 release sentenced inmates before they complete their sentences and without completing
13 a rehabilitation or reentry program. (Munks Aff., 8:25-28.)

14 e. During two weeks in 2007 when CDCR would not accept new
15 prisoners to San Quentin, San Mateo County jails developed a 40 inmate backlog of
16 prisoners waiting to be transported there. (Munks Aff., 7:8-13.) San Mateo County
17 sends about 30-35 inmates to CDCR each week. If CDCR refused to accept these
18 inmates due to a population cap, the County would have to house these prisoners,
19 worsening its overcrowding problem. (Munks Aff., 7:4-13, Trial Tr., 12/9/08 at 1785:24-
20 25, 1786:1-2.) Under those circumstances, the County Sherriff "would expect to see
21 more assaults on staff and the necessity for more keep away orders, and that would give
22 us even less flexibility in housing additional inmates." (Munks Report, p. 4.)

23 103. Santa Clara County:

24 a. According to Nancy Pena, Director of the Mental Health Department
25 of Santa Clara Valley Health and Hospital System, Santa Clara County lacks the
26 resources to provide adequate clinical assessments, counseling and treatment beds for
its current inmate population. There is a backlog for access to those services among
current prisoners. (Pena Report, 10/30/08, *Plata Dock*. No. 1646 at 4.)

27 b. Gary Graves, Acting County Executive for Santa Clara County,
28 explained that the release of state prisoners would ultimately cause "overwhelming" jail
overcrowding in Santa Clara County, even if state inmates were released into the County

1 "phased over a period of time." (Graves Report, 10/30/08, *Plata* Dock. No. 1643 at 2-3.)

2 104. Solano County/Vacaville: Chief Word explained that the number of patrol
3 officers in the Vacaville police department has recently been reduced from 52 to 48.
4 There is also currently a hiring freeze for the police department, so further staff losses
5 can be expected through attrition. (Trial Tr., 12/9/08, at 1872:13-19; 1873: 4-13.)

6 105. Sonoma County: A prisoner release order would have an adverse
7 impact on the operation of the criminal justice system in Sonoma County. Sonoma
8 County has developed a plan to reduce recidivism through jail reforms. A prisoner
9 release order will have a negative impact on this plan because the County will need to
10 divert necessary funds and resources for releasees that chose to reside in Sonoma
11 County. (Trial Aff. of William Cogbill, 10/30/08, *Plata* Dock. No. 1676 at ¶ 9.)

12 106. Stanislaus County:

13 a. Adam Christianson, Sheriff-Coroner of Stanislaus County, testified
14 that the budget for the Stanislaus County Sheriff's Department was cut by 2.8% in
15 December 2008. (Trial Tr., 12/18/08, at 2671:14-18.) Stanislaus County jails are
16 currently overcrowded and understaffed, and operate under a federally-posed population
17 cap of 1492 due to conditions of confinement, access to programs and medical care in
18 the jails. The County has had to release prisoners due to this cap 48 times since 2006.
19 (Christianson's Aff., 10/30/08, *Plata* Dock. No. 1727 at 5:26-27, Ex. 2, p. 18.)

20 b. Stanislaus County has determined that it needs to add 420 medium
21 security beds immediately, and ultimately increase its capacity to 2200, to meet current
22 needs, not taking into account any potential population increases resulting from a state
23 population cap. (Trial Tr., 12/18/08, at 2669:3-8.) The County does not currently have
24 funding available to add the additional bed capacity it needs. Even if funding becomes
25 available, it will take approximately 4-5 years to add these additional beds. (*Id.* at
26 2669:21-24, 2670:3-6.)

27 c. Stanislaus County does not possess sufficient resources, facilities,
28 or funding to provide adequate health care to additional inmates. (Christianson's Aff., p.

1 17, Ex. 2.)

2 107. Yolo County: Don Meyer, Chief Probation Officer for Yolo County,
3 explained that Yolo County jails are subject to a court-ordered population cap. In order
4 to stay under that cap, the jail must regularly release prisoners whom it would not
5 otherwise release, "sometimes on a daily basis." (Trial Tr., 12/9/08, at 2768:50, 2769:3-
6 9.)

7 (ii) **County services needed to reduce recidivism are already**
8 **strained.**

9 (a) **Services are needed to reduce recidivism.**

10 108. Key factors impacting recidivism include substance abuse, housing status,
11 literacy, family environment and support, and employment status. (Word's Aff., 7:4-6.)
12 Mr. Pacheco explained that the failure to provide services such as job training and drug
13 treatment to probationers increases the likelihood of recidivism. (Trial Tr., 12/12/08 at
14 2382:11-13, 2385:15-17.) Mr. Conklin testified that releasing inmates early without
15 providing for services and a plan for transition, will have an adverse impact on public
16 safety. (Conklin's Trial Aff. ¶ 39; Trial Tr., 12/10/08, 2059:9-2060:7, 2070:23-2071:12.)
17 These services and plan must be administered appropriately to reduce adverse impacts
18 on public safety, meaning it should start early in the incarceration process and that the
19 inmate should agree to the plan. (Conklin Aff., ¶ 40.)

20 109. Karen Dalton, Director of the Bureau of Operations of Offender Programs
21 and Services for Los Angeles, testified that when released inmates reenter the
22 community, they are unable to financially support themselves, which eventually leads to
23 increased crime. (Am. Trial Aff. of Karen Dalton, 10/31/08, *Plata Dock*. No. 1745, ¶ 30.)
24 Drugs and unemployment are significant factors that contribute to released inmates
25 reoffending. Fresno County is uniquely a poor environment due to its high
26 unemployment rate and high drug supply. (Am. Expert Report of Jerry Dyer,
27 12/12/2008, *Plata Dock*. No. 1937, ¶¶ 19-24.) Insufficient funding for local rehabilitative
28 services at the county level also contributes to recidivism. (James Aff., 10:24-26.)

1 housing, and mental health programs which provide rehabilitative support to released
2 prisoners. (Graves' Report, p. 4.)

3 **(c) Mental health and substance abuse services**

4 113. In many counties, including San Mateo County, county mental health
5 departments provide services to inmates. If a population cap prevents these counties
6 from transferring prisoners to the state, the county mental health departments will have
7 to provide mental health services for those inmates. (Boesch Aff., 10:8-13.)

8 114. Approximately 70% of releasees would likely have substance abuse
9 problems severe enough to require treatment. (Graves Report at 5.) Approximately 70-
10 75% of the mentally ill offender population has a co-occurring substance abuse disorder.
11 (Trial Tr., 12/18/08 at 2514:6-13; Trial Tr., 12/5/08 at 1624:3-12.) This co-occurring
12 substance abuse can be a significant factor in additional psychiatric crises and will cause
13 decompensation in the mental health population. (Trial Tr., 12/18/08 at 2514:14-17.)
14 Prior substance abuse is also recognized as a predictive factor of increased violence
15 and harm to self or others. (Battaile Report at 20; Trial Tr., 12/5/08 at 1625:10-24.)
16 County mental health centers do not have the capacity or staff to offer services to an
17 additional number of released prisoners seeking services (Trial Tr., 12/18/08 at 2518:25-
18 2519:13.) Without receiving services, these mentally ill offenders could become victims,
19 homeless, or die. (*Id.* at 2523:23-2524:12.)

20 115. Amador County: Amador County Behavioral Health Department currently
21 has a 6-8 week waiting list for appointments with psychiatrists. Clients must currently
22 wait two weeks after requesting aid from the Department until they can receive services.
23 (Ryan Aff., 9:12-17.)

24 116. Orange County: Orange County maintains a diversion program that sends
25 Defendants with mental illnesses to mental health treatment facilities instead of jail. This
26 program, however, suffers from a lack of resources and cannot meet the current demand
27 for mental health services. (James Aff., 4:25-28, 5:4-6.) "There are not enough mental
28 health beds existing to house the mentally ill currently living in" Orange County, and "not

1 enough mental health care professionals to provide services to. . . the currently present
2 mentally ill population.” As a result, “(i)f there were more mentally ill persons in the
3 County. . . there would be nobody to treat them.” (*Id.* at 11:28-29.)

4 117. San Diego County: Simply releasing inmates, particularly the mentally ill,
5 and requiring them to integrate themselves into the community will not be successful.
6 San Diego, like other counties, does not have the resources to fund programs necessary
7 for the inmates that will arrive in this County as a result of a prisoner release order.
8 (Conklin Trial Aff., ¶¶ 29, 41.) There is a lack of resources to treat drug addiction to
9 those who need it, so they can stop committing crimes. There is also a lack of resources
10 to treat individuals in the county that need treatment for mental health. (Trial Tr.,
11 12/10/08 at 2073:15-2074:6.) Given other regulations, even if San Diego had sufficient
12 financial resources, these programs could not be provided immediately as other
13 regulations would delay immediate implementation of these programs. (Conklin Trial
14 Aff., ¶ 42.)

15 118. San Mateo County: Charlene Silva, Director of the San Mateo County
16 Health Department explained that the San Mateo County public healthcare and mental
17 health systems are currently “stretched in meeting the needs of current residents.”
18 (Silva’s Aff., 10/30/08, *Plata Dock*. No. 1698 at 2:16-17, 3:5-28.) Clients in need of
19 primary care appointments must currently wait 2-4 months. The County cannot fill long-
20 standing vacancies in certain needed specialty areas, such as psychiatry. The County
21 can serve only one in five current residents in need of substance abuse treatment. No
22 publicly subsidized assisted living capacity exists, and clients in need of long-term care
23 must be placed on a waiting list. State budget cuts to Medi-Cal will likely result in
24 reductions of current capacity. (*Id.*)

25 119. Santa Clara County: Santa Clara County cannot meet the mental health
26 and substance abuse treatment needs of its current population of prisoners. There are
27 only enough resources to provide such services to 700 out of 2000-2500 inmates in
28 need of them annually. (Pena Report at 4-5, Pena Aff., 25-28.)

1 123. Even employed, healthy, motivated and sober residents have difficulty
2 finding affordable housing in San Mateo County, and parolees are more likely to have
3 barriers to finding housing than those residents. (Bay Stipulation at 2:5-9, 16-21.)
4 During July 2008, San Mateo County opened its Section 8 waiting list for one week.
5 23,000 additional households signed up for the waiting list during that week. (*Id.* at 2:10-
6 11.) Released inmates who cannot find open-market housing will be forced to seek
7 shelter with relatives or acquaintances, transitional treatment facilities, or homeless
8 shelters. (Bay Aff., 2:17-19.) Because demand for shelter and treatment facility beds in
9 San Mateo County exceeds supply by approximately 2:1, many early-released prisoners
10 will become homeless. (*Id.* at 2:20-24.)

11 **(iii) Existing parole services are insufficient and cannot**
12 **support additional parolees.**

13 124. Nancy Pena explained that CDCR cannot provide needed outpatient
14 services to its existing parolee population in Santa Clara County, and discussed with the
15 County the possibility of the County providing additional services to compensate. (Trial
16 Tr., 12/12/08 at 2432:16-28.) According to one sample, approximately 60% of parolees
17 receiving state outpatient services also accessed County services. (*Id.* at 2432:16-22.)
18 Even Plaintiffs' expert Craig Haney opined that there should not be a one-time or
19 immediate release of prisoners. (Trial Tr. Haney, 12/2/08, 972: 7-973: 25.) Any release
20 should be commensurate with available community resources. (*Id.*)

21 125. Bonnie Dumanis, District Attorney of San Diego, testified that a prisoner
22 release order will result in the release of inmates into the community and would result in
23 little or no supervision from the parole department as they lack sufficient resources to
24 provide adequate supervision. (Trial Aff. of Bonnie Dumanis, 10/30/08, *Plata Dock. No.*
25 *1711*, ¶ 22.)

26 126. Rod Pacheco explained that CDCR parole efforts are currently
27 "overwhelmed: and "cannot meaningfully provide assistance (to parolees) in any
28 significant way." (Trial Tr., 12/12/08 at 2382:22-28.) The parole system is greatly

1 overburdened and as a result adequate parole supervision is not possible. Due to the
2 inadequate parole supervision, many crimes are committed by individuals on parole.
3 (Am. Expert Report of Jerry Dyer, 12/12/2008, *Plata Dock*. No. 1937, ¶ 32.)

4 127. Chief Dyer testified that parole supervision in Fresno County is "not
5 adequate." Parole agents carry a caseload of approximately 100 parolees (although the
6 ratio is higher for parolees in danger of their third strikes, or sex offenders). (Trial Tr.,
7 12/12/08 at 2306:24-28.) The reduction of parole supervision will likely result in an
8 increase in crime. (Conklin Aff., ¶ 43.)

9 128. CDCR's Director of the Division of Parole Operations, Thomas Hoffman, is
10 also concerned that a prisoner release order resulting in a release of additional mentally
11 ill offenders from prison onto parole would overwhelm the current resources available to
12 CDCR's Parole Outpatient Clinic system. If these additional mentally ill parolees did not
13 receive mental health services, Mr. Hoffman foresees a risk of increased recidivism
14 among that population. (Trial Tr., 12/9/08 at 1770:11-23.) Additionally, as Defendants'
15 expert Gale Battaile testified, studies have shown that mentally ill parolees who have
16 contact with outpatient services in the months immediately after their release
17 demonstrate a much lower rate of recidivism than mentally ill parolees who do not have
18 contemporaneous outpatient contact and care. (Trial Tr. 12/18/08 at 2517:21 - 2518:24;
19 Defs.' Trial Ex. 1308 - Mentally Ill Parolee Population, Mar. 28, 2008.) Furthermore, a
20 release of approximately 2,500 additional parolees per month would severely hamper
21 CDCR's ability to "front load" services and programs for offenders recently released onto
22 parole, which may have detrimental effects on attempts to reduce recidivism among
23 parolees. (Trial Tr., 12/9/08 at 1757:18 - 1758:20.)

24 **C. Alternatives Other Than a Prisoner Release Order Exist to Reduce the**
25 **Prison Population.**

26 129. San Diego's model Mentally Ill Offender Crime Reduction Program
27 (MIOCR) provides five levels of treatment, focuses on the client, and increases
28 accountability. After comparing with a control group, those that went through this

1 program were more apt to utilize services and transition into community living. This also
2 resulted in reduced convictions and bookings. (Conklin Aff., ¶¶ 17-24.)

3 130. Senate Bill 618 is a multi-agency plan that prepares non-violent offenders
4 for re-entry into their communities upon release from parole. Probation Officers,
5 Counselors, and others work with the individual do develop a life plan. The results of
6 this program have been promising. Since the program's inception, 99 inmates have
7 been released. Only three have returned to prison on parole violations and three have
8 committed new crimes. (Conklin Aff., ¶¶ 31-34.) Ms. Dumanis testified that SB 618 is
9 an effective program that will reduce the prison population. If expanded it will reduce the
10 number of people that enter prisons. These individuals are being assessed for drug
11 treatment and programs and they develop a life plan which provides them with the help
12 they need and reduces recidivism. In particular, they will not languish in the reception
13 centers which integrates them with other inmates that are more dangerous than they are
14 and may force them to join gangs. (Trial Tr., 12/12/08 at 2411:17-2413:11.)

15 131. Other local programs like SB 618. One is the Head Start program which is
16 implemented in San Francisco. Offenders that are set for release are connected with
17 employers for employment and the program has proven to be successful. Another
18 similar program exists in Santa Barbara. (*Id.* at 2416:15-2418:1.)

19 132. Senate Bill 718 allows County sheriffs to obtain money from the County
20 Welfare Fund to assist indigent inmates, after release with the reentry process.
21 Implementation of this program assists inmates in staying out of trouble upon release.
22 (Am. Trial Aff. of Karen Dalton, 10/31/08, *Plata Dock*. No. 1745, ¶ 18; Stipulation
23 Regarding Test. of Karen Dalton, 12/17/08, *Plata Dock*. No. 1954 at 2:6-10 .)

24 133. Community Based Corrections Act of 1994 This Act allows counties to
25 implement alternatives to jail tying people to the appropriate programs and services.
26 (Am. Trial Aff. of Karen Dalton, 10/31/08, *Plata Dock*. No. 1745, ¶¶ 19-21.)

27 134. In the area of parole operations, CDCR has recently adopted evidence-
28 based practices that will send parolees to programs and resources that will serve their

1 needs, divert parolees to alternative sanctions program instead of returning them to
2 California's prisons, and provide for more consistent parole revocation decisions.
3 (Hoffman Aff., 4:12-27.) Utilizing the COMPAS tool, CDCR assesses the risk that a
4 parolee represents based on a variety of factors and develops a parole plan to best
5 serve the individual's needs. (Trial Tr., 12/9/08 at 1740:77-1741:8; Hoffman Aff. 8:23-
6 9:5.) CDCR has also increased the availability and use of Alternative Sanctions
7 Programs, in which eligible parolees are sent to intermediate custody settings or
8 community-based programs in lieu of returning to prison. (Hoffman Aff. 10:3-17; Trial
9 Tr., 12/9/08 at 1742:24 -1743:8.) CDCR has recently developed and piloted the Parole
10 Violations Decision Making Instrument, an evidence-based tool that will provide greater
11 uniformity to parole violation decision and foster increased use of Alternative Sanctions
12 in lieu of return to prison. (Hoffman Aff. 6:17-26; Trial Tr., 12/9/08 at 1742:15-24). This
13 parole violations instrument has been developed after intense study of similar tools in a
14 variety of state correctional systems, including Texas, New Jersey, Kansas, Ohio, and
15 Florida, all of whom have seen a reduction in the use of the revocation process and a
16 reduction in prison populations. (Trial Tr., 12/9/08 at 1743:9-21, 1745:4-9.) Mr. Hoffman
17 testified that he "absolutely" believed the use of the parole violations tool in California will
18 eventually result in less recidivism and fewer parole revocations. (*Id.* at 22-25.)

19 135. AB 900: AB 900 includes provides for reduction of overcrowding and non-
20 traditional beds that take up programming space to make room for more rehabilitative
21 programming. AB 900 also provides for the construction of reentry facilities to allow
22 offenders to be housed closer to their communities, to reduce overcrowding and facilitate
23 reintegration into society. (Kernan Aff., ¶¶ 5, 10-11.)

24 136. Population Reduction Measures Underway by CDCR: CDCR has made
25 efforts to address overcrowding, including transferring inmates out of state, and has
26 ongoing plans in place to help stabilize and reduce the size of the prison population,
27 including parole reform, expansion of rehabilitative programming, and development of re-
28 entry facilities. (Cate Aff., ¶ 8, 35-38, 39-44, 46, and 47; see also Kernan, Hoffman, and

1 Jett Affs.)

2 IV. CONCLUSIONS OF LAW

3 A. **Plaintiffs Have Failed to Meet Their Burden of Establishing by Clear and** 4 **Convincing Evidence that Crowding Is the Primary Cause of the** 5 **Constitutional Violations Regarding Prison Medical and Mental Health Care,** 6 **and that a Prisoner Release Order Is the Only Remedy that Can Address the** 7 **Violations.**

8 To obtain a prisoner release order, Plaintiffs have the burden to prove by clear
9 and convincing evidence that “crowding is the primary cause of the violation of a Federal
10 right” *and* that “no other relief will remedy the violation of the Federal right.” 18 U.S.C. §
11 3626(a)(3)(E); *Roberts v. Mahoning County*, 495 F. Supp. 2d 713, 716 (N.D. Ohio 2006)
12 (per curiam) (noting that the burden of proof to establish the prerequisites for a prisoner
13 release order is on the plaintiff class) (*Roberts I*). Clear and convincing evidence is an
14 exacting standard “which produces in the mind of the trier of fact a firm belief or
15 conviction as to the truth of the allegations sought to be established, evidence so clear,
16 direct and weighty and convincing as to enable the factfinder to come to a clear
17 conviction, without hesitancy, of the truth of the precise facts in issue.” *Cruzan v. Dir.,*
18 *Mo. Dep’t of Health*, 497 U.S. 261, 285 n11 (1990) (internal quotations and citations
19 omitted).

20 In the *Plata* case, the Federal right at issue is the delivery of a constitutional level
21 of medical care in California’s prisons. In the *Coleman* case, the Federal right at issue is
22 the delivery of a constitutional level of mental health care in California’s prisons.

23 (1) **“The Primary Cause” Means “the Chief, Principal or Root” Cause.**

24 The PLRA does not define “primary,” and thus the Court must look to the ordinary
25 meaning of this term. See *United States v. Jackson*, 480 F.3d 1014, 1022 (9th Cir.
26 2007). “Primary” commonly means “first or highest in rank or importance; chief;
27 principal.” *Random House Webster’s Unabridged Dictionary* 1537 (2d ed. 1998); accord
28 *American Heritage College Dictionary* 1106 (4th ed. 2002) (“First or highest in rank,
quality, or importance; principal.”). The term “the primary cause” must also be read in
conjunction with the second, related requirement that “no other relief will remedy the

1 violation of the Federal right.” In other words, crowding must be so central to the
2 condition complained of that it is the only remedy for the problem. See *Roberts I*, 495 F.
3 Supp. 2d at 715 (describing the statutory question as whether “a prisoner release order
4 is *the only way* to stop the unconstitutional behavior.”). The two requirements read
5 together reveal a meaning of “primary” consistent with the common definition, i.e., for a
6 prisoner release order to issue, crowding must be the most important, or principal, cause
7 of the violation.

8 Further, the statute’s use of the word “the,” which the dictionary defines as “so as
9 to exceed all others,” emphasizes that crowding has to be the main cause, rather than
10 one of the causes of the violation of a Federal right. *Id.* at 2389. “In construing statute,
11 definite article ‘the’ particularizes the subject which it precedes and is word of limitation
12 as opposed to indefinite or generalizing force ‘a’ or ‘an.’” *In re Dow Corning Corp.*, 237
13 B.R. 380, 404 (Bankr. E.D. Mich. 1999) (quoting *Black’s Law Dictionary* 1477 (6th ed.
14 1990)). Similarly, in *Roberts v. Mahoning County*, the only other post-PLRA case
15 addressing a prisoner release order, the court defined the burden of proof as a showing
16 that “crowding is . . . *the root cause* of a constitutional violation and that there is no other
17 viable remedy to cure the constitutional violation.” *Roberts v. Mahoning County*, 2007
18 U.S. Dist. LEXIS 70344 *11 (N.D. Ohio May 17, 2007) (emphasis added).

19 The plain meaning of “the primary cause” is consistent with the legislative intent of
20 the PLRA, which was to impose a strict causal standard between crowding and the
21 claimed violation before a prisoner release order could issue. Senator Dole, the principal
22 sponsor of the PLRA, characterized the provisions on prisoner release orders as “tough
23 new guidelines for Federal courts when evaluating legal challenges to prison conditions”
24 and “tough new conditions that a Federal court must meet before issuing a prison cap
25 order.” The purpose of the bill was to restrain “(p)erhaps the most pernicious form of
26 judicial micro-management . . . the so-called prison population cap” and to “help slam-
27 shut the revolving prison door.” 141 Cong. Rec. S14413 (daily ed. Sept. 27, 1995)
28 (Statement of Sen. Dole).

1 Thus, the phrase "the primary cause" means "the chief, principal or root cause,"
2 as distinguished from *one* of the main causes, or simply a cause.

3 **(2) Crowding Must Be the Primary Cause of the Violation Existing as of**
4 **the Time of the Relief.**

5 The PLRA makes it clear that prospective relief must be necessary to correct "a
6 *current and ongoing violation* of the Federal right." 18 U.S.C. § 3626(b)(3). The Eighth
7 Circuit in *Tyler v. Murphy*, 135 F.3d 594, 597 (8th Cir. 1998), wrote that "Section
8 3626(b)(3) expressly permits the district court to continue appropriately tailored
9 prospective relief that the court finds necessary to remedy a *current* violation of federal
10 rights." (emph. added.)

11 Accordingly, to enter a prisoner release order, this Court must find by clear and
12 convincing evidence that crowding is "the chief, principal or root" cause, or "the highest
13 in importance" causal factor of, the violation of a Federal right, rather than one of the
14 causes of such violation, such that no other relief will remedy the violation as it exists at
15 this time.

16 Based upon the record and the Findings of Fact in Section III.A above, this Court
17 concludes that Plaintiffs have not met their burden of showing by clear and convincing
18 evidence that crowding is the primary cause of constitutional violations in the prison
19 medical and mental health care system, and that a prisoner release order is the only
20 remedy that can address the violations. First, in both *Plata* and *Coleman*, significant
21 improvements have been made under the court's existing remedies. The evidence
22 shows that improvements can and will continue.

23 Second, Plaintiffs have not established by clear and convincing evidence that the
24 prisoner release order they request will remedy the existing constitutional inadequacies
25 in the delivery of medical and mental health care. Significantly, Plaintiffs have not
26 established a clear link between the specific population level they seek—a prisoner
27 release order of approximately 52,000 inmates or 130% of design capacity—and the
28 quality of the delivery of medical or mental health care. According to Plaintiffs' own

1 witnesses, “design capacity” is not the appropriate measure for a prison system’s
2 capacity to deliver constitutionally adequate medical and mental health care, and other
3 prison systems deliver constitutionally adequate medical and mental health when
4 operated above “design capacity.” Plaintiffs have offered no evidence about what the
5 “operable capacity” of California’s prison system must be to provide adequate medical
6 and mental health care. Plaintiffs have also failed to draw a clear link between the size
7 of the overall prison population and its impact on the delivery of mental health care to the
8 *Coleman* class, inmates with serious mental disorders, of whom those with the most
9 intensive needs are housed separately from the general population.

10 Having fewer prisoners would make all prison operations easier, but that is not the
11 standard under the PLRA. The elimination of non-traditional beds is already a priority for
12 Defendants. Non-traditional beds have already come down by the thousands, and more
13 non-traditional beds come down regularly. There is no clear and convincing evidence
14 that the existence of non-traditional beds is the root cause of inadequacies in the
15 delivery of medical and mental and mental health care. Neither is there clear evidence
16 establishing that 50,000 fewer prisoners (or any lesser number) would remedy the
17 deficiencies in prison medical and mental health care. In fact, the evidence at trial was
18 to the contrary.

19 Because Plaintiffs have failed to meet their burden of clearly and convincingly
20 proving that a prisoner release order would remedy the deficiencies in prison medical
21 and mental health care, their request for a prisoner release order is denied.

22 **B. Giving Substantial Weight to the Likely Adverse Impacts on Public Safety
23 and Local Criminal Justice Systems Precludes Issuance of a Prisoner
24 Release Order.**

25 The PLRA provides that the court shall give substantial weight to any adverse
26 impact on public safety or the operation of a criminal justice system caused by the
27 requested relief. 18 U.S.C. § 3626(a)(1)(A). This provision constitutes a further
28 limitation on the authority of a court to fashion relief in a conditions of confinement case.
In the *Roberts* case, the district court issued a prisoner release order based on the

1 parties' consent, but only after it "considered and weighed any adverse impact on public
2 safety and the effect on the operation of a criminal justice system." *Roberts*, 2007 U.S.
3 Dist. LEXIS 70344 at *13-14. The House of Representatives Report notes that this
4 subsection "requires the court to give appropriate consideration, *in selecting or*
5 *approving a remedy*, to any potential impact on public safety or the criminal justice
6 system." H.R. Rep. No. 104-21, at 24 (1995) (emphasis added). Such consideration to
7 public safety and the impact on the criminal justice system is mandatory: "Use of the
8 word 'shall' in this provision creates a mandatory, not a discretionary duty on the part of
9 the federal judge to limit relief in prison conditions suits as directed by Congress." *Id.* at
10 24 n.3.

11 In considering the potential adverse impact on public safety and the criminal
12 justice system, this Court must be mindful of the limitations on its powers. This Court
13 does not have the power to order relief such as the appropriation or allocation of funds
14 or the creation of programs and services that might mitigate the impact of a prisoner
15 release order. The power to raise and allocate money is left to the executive and
16 legislative bodies. *Rhem v. Malcom*, 507 F.2d 333, 341 (2d Cir. 1974).

17 In *Rhem*, the district court determined that the conditions in the "Tombs" (the
18 Manhattan House of Detention for Men) were so violative of the constitution that the City
19 was enjoined from housing any inmates in the Tombs. The City had been ordered to
20 devise a plan to bring the facility up to constitutional standards but refused to do so, so
21 the Court enjoined the City from housing any inmates there. The case was appealed to
22 the Second Circuit which affirmed the Court's finding that the conditions were
23 unconstitutional, but remanded for the district court to re-fashion appropriate equitable
24 relief. The Second Circuit stated that although courts can require prisons to undergo
25 extensive changes, this particular case was unusual because the constitutional
26 violations required substantial physical changes to a jail in a major metropolitan area
27 with financial problems. The Second Circuit found that the district court should have
28 limited the use of the jail to certain narrow functions by a fixed date unless specified

1 standards were met. The Second Circuit stated that the District Court could, in its
2 discretion, postpone any order to close the jail or limit its use if the City can show by
3 clear and convincing evidence that there is adequate planning and funding of
4 improvements. The Second Circuit noted that this approach may not differ significantly
5 from the district court's approach, but at least this approach has the advantage of "not
6 putting the judge in the difficult position of trying to enforce a direct order to the City to
7 raise and allocate large sums of money . . . steps traditionally left to appropriate
8 executive and legislative bodies responsible to the voters." *Id.* at 341.

9 In *Anderson v. Redman*, 429 F. Supp. 1105, 1130-31 (D. Del. 1977), the court
10 grappled with the correctional officer to inmate ratio and the costs associated with
11 incarceration, particularly of inmates awaiting bail or inmates who are not a danger to
12 society. The court asked, "Can the State of Delaware afford the financial and social
13 costs of incarcerating individuals who do not require incarceration and incarcerating
14 others longer than is necessary to protect society?" The court concluded that even if it
15 would be an enormous cost savings to parole inmates rather than house them, it was not
16 for the court to make that determination because "the answers to these questions are
17 properly resolved through the political process, not by opinion of this Court." *Id.* at 1131.
18 The *Anderson* court examined various options available to the state to reduce its prison
19 overcrowding such as work release, halfway houses, furlough, changes to sentencing,
20 and diversion, but ultimately only ordered a reduction in the state's prison population
21 because the other alternatives were for the legislature, not the court, to implement. *Id.* at
22 1136. Notably, the *Anderson* court issued a prisoner release order before the strict
23 standards of the PLRA were enacted.

24 Based upon the record and the Findings of Fact in Section III.B above, this Court
25 concludes that evidence exists of a likely adverse impact of the requested prisoner
26 release order on public safety and local criminal justice systems. Plaintiffs seek a
27 substantial reduction in California's prison population. Plaintiffs' experts acknowledged
28 that research exists showing that a substantial decrease in a State's incarceration rate

1 may result in an increase in the crime rate. Plaintiffs' expert, Dr. Austin, also
2 acknowledged that additional arrests would likely occur as a result of a prison population
3 reduction. This Court must give substantial weight to the likelihood that additional crimes
4 would occur and the possibility that an increase in the crime rate may occur.

5 This Court must also give substantial weight to the overwhelming evidence that
6 California's local criminal justice systems are already strained. An increase in arrests
7 would use more police, prosecutorial, and court services, which are in short supply in
8 many Counties. Also, a majority of California Counties have population caps or control
9 measures in place on their jails. An influx of more jail inmates due to additional arrests
10 would adversely affect these jail systems, as would the inability of the jails to transfer
11 inmates to prison if a State prison population cap were in place. Many, if not most of,
12 California Counties also do not have the resources to absorb more probationers, an
13 alternative to incarceration suggested by Plaintiffs.

14 Counties across California are facing budget cuts. Many, if not most of, California
15 Counties lack the community-based services needed to reduce the chance of reoffense
16 by persons convicted of felonies who would be in prison if not for the prisoner release
17 order. Sufficient jobs and housing are likely not available. Neither are sufficient
18 behavioral health and substance abuse treatment services. Without these resources, a
19 significant percentage of persons who would otherwise be in prison will commit a new
20 crime or crimes. As noted above, the Court does not have the authority to order the
21 appropriation of State funds to the Counties to create and provide the necessary
22 resources.

23 Having given substantial weight to the likely adverse impacts on public safety and
24 local criminal justice systems of the prisoner release order Plaintiffs seek, this Court
25 denies Plaintiffs' request.

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2 **C. Plaintiffs' Requested Relief Is Not Narrowly Drawn, Extends Further Than**
3 **Necessary, and Is Not the Least Intrusive Means Necessary to Correct the**
4 **Violations With Respect to Delivery of Medical and Mental Health Care to**
5 **Prisoners.**

6 Under the PLRA prospective relief must be narrowly drawn, extend no further
7 than necessary to correct the violation of the Federal right, and be the least intrusive
8 means necessary to correct the violation of the Federal right. 18 U.S.C. § 3626(a)(1)(A).
9 The PLRA "amended § 3626 to impose greater procedural and substantive restrictions
10 on federal court authority to issue broad injunctions regulating conditions at state and
11 local prisons." *Tyler v. Murphy*, 135 F.3d 594, 595 (8th Cir. 1998). The statute "limits
12 remedies to those necessary to remedy the proven violation of federal rights." *Id.* at 596
13 (quoting H.R. Rep. No. 104-21, at 24 n.2 (1995)). This provision "stops judges from
14 imposing remedies intended to effect an overall modernization of local prison systems or
15 provide an overall improvement in prison conditions." *Plyler v. Moore*, 100 F.3d 365, 369
16 (4th Cir. 1996) (quoting H.R. Rep. No. 104-21, at 24 n.2).

17 Under the PLRA, a prisoner release order is the remedy of last resort. It is by
18 definition not the least intrusive means to correct a violation, unless all other means have
19 failed. In both *Plata* and *Coleman*, the courts have issued relief which is less intrusive
20 than a prisoner release order. It cannot be said that these remedies have failed. To the
21 contrary, substantial improvements in the delivery of medical and mental health care to
22 California's inmates have been made as a result of these ongoing remedies. Further
23 substantial improvements are expected.

24 Plaintiffs have also failed to establish the necessary connection between the
25 substantial population reduction of over 50,000 prisoners they seek and the existing
26 inadequacies in the delivery of medical and mental health care. This Court cannot
27 conclude that a prisoner release order extends no further than necessary.

28 Last, Plaintiffs' requested prisoner release order is not narrowly drawn. It is
directed at the general prison population, not the *Plata* and *Coleman* classes, and it

1 seeks a one-third reduction in the overall population. This is broad, not narrow, relief,
2 the granting of which is not supported by the record.

3 Based upon the record and the Findings of Fact in Sections III.A and C above,
4 this Court concludes that Plaintiffs' requested relief is not narrowly drawn, extends
5 further than necessary, and is not the least intrusive means necessary to correct the
6 violations with respect to delivery of medical and mental health care to prisoners.

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V. CONCLUSION

Based upon the record and the Findings of Fact and Conclusions of Law above, this Court concludes that Plaintiffs have not met their burden of showing by clear and convincing evidence that crowding is the primary cause of constitutional violations in the prison medical and mental health care system, and that a prisoner release order is the only remedy that can address the violations. Additionally, having given substantial weight to the likely adverse impacts on public safety and local criminal justice systems precludes issuance of a prisoner release order. Last, this Court concludes that Plaintiffs' requested relief is not narrowly drawn, extends further than necessary, and is not the least intrusive means necessary to correct the violations with respect to delivery of medical and mental health care to prisoners.

Plaintiffs' request for a prisoner release order is denied.

IT IS SO ORDERED.

Dated: February ____, 2009

STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

Dated: February ____, 2009

LAWRENCE K. KARLTON
SENIOR UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF CALIFORNIA

Dated: February ____, 2009

THELTON E. HENDERSON
SENIOR UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA