

1 IN THE UNITED STATES DISTRICT COURTS
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3 AND THE NORTHERN DISTRICT OF CALIFORNIA
4 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
5 PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE
6

7 RALPH COLEMAN, et al.,
8 Plaintiffs,

9 v.

10 ARNOLD SCHWARZENEGGER,
11 et al.,
12 Defendants.

NO. CIV S-90-0520 LKK JFM P

THREE-JUDGE COURT

13 MARCIANO PLATA, et al.,
14 Plaintiffs,

15 v.

16 ARNOLD SCHWARZENEGGER,
17 et al.,
18 Defendants.

NO. C01-1351 THE

THREE-JUDGE COURT

**ORDER ON PLAINTIFFS’
MOTION TO COMPEL**

19
20 Plaintiffs have filed a motion to compel defendants to consult with plaintiffs
21 concerning defendants’ proposed population reduction plan and to produce to plaintiffs data
22 relevant to evaluation of that plan. Specifically, plaintiffs seek an order requiring defendants
23 to immediately provide plaintiffs with notice of the population reduction measures
24 defendants are “actively considering” and data necessary to analyze those measures, to
25 provide plaintiffs with their proposed plan not later than twenty-four hours in advance of
26 meeting with plaintiffs, and to meet with plaintiffs not later than September 10, 2009.
27 Defendants oppose the motion.
28

1 Pursuant to this court's August 4, 2009 order, defendants are required to submit to the
2 court by September 18, 2009 a proposed plan to reduce the population of CDCR's adult
3 prisons, in no more than two years, to 137.5% of their combined design capacity. Plaintiffs'
4 motion arises from the requirement in the August 4, 2009 order that:

5 in preparing their plan, defendants shall consult with plaintiffs,
6 intervenors, and other relevant stakeholders, including the
7 *Coleman* Special Master and the *Plata* Receiver. Should such
8 consultation fail to resolve any objections to the proposed
9 population reduction plan, plaintiffs and intervenors shall file
their objections no more than 20 days after defendants file their
proposed plan, and defendants shall file responses to such
objections no more than 10 days thereafter.

10 Aug. 4, 2009 Opinion & Order at 183.

11 The core of plaintiffs' motion centers on defendants' refusal, thus far, to provide to
12 plaintiffs data to evaluate defendants' proposed population reduction measures. With the
13 motion, plaintiffs present evidence that on August 21, 2009, they requested that defendants
14 provide plaintiffs and their expert, Dr. Austin, with the following data files for purposes of
15 evaluating defendants' proposed population reduction measures: (1) prison admissions for
16 the last 12 months; (2) prison releases for the last 12 months; (3) the current prisoner
17 population; (4) the current parolee population; and (5) parole releases for the last 12 months,
18 with each file containing offense, sentence, classification and risk assessment, and
19 demographics for the respective category. Ex. A to Evenson Decl. Plaintiffs represent that
20 defendants have previously provided the "same core data elements" to their expert, Dr. James
21 Austin.¹ *Id.* On August 27, 2009, defendants informed plaintiffs that they would not provide
22 the requested information. *Id.* On September 1, 2009, plaintiffs again requested the
23 information and a response by noon on September 2, 2009. Ex. B to Evenson Decl.
24 Plaintiffs represent that they did not receive a response to the September 1, 2009 e-mail. The
25 instant motion was filed at 2:05 p.m. on September 2, 2009.

27 ¹Dr. Austin served on the CDCR's Expert Panel on Adult Offender Recidivism
28 Reduction Programming. *See* Aug. 4, 2009 Opinion & Order at 45 n.39.

1 Defendants oppose the motion on grounds that (1) any meeting prior to the end of the
2 current session of the California legislature on September 11, 2009, would be premature;
3 (2) the document production request is unduly burdensome; and (3) plaintiffs have failed to
4 comply with procedures set forth in Eastern District of California Local Rule 37-251
5 governing discovery disputes, specifically, the preparation of a joint statement regarding the
6 dispute.

7 After review of the motion and the opposition thereto, and good cause appearing,
8 defendants are required to provide the information requested to plaintiffs on or before
9 September 18, 2009. Plaintiffs' request to advance the meeting presently set for
10 September 14, 2009 is denied. The August 4, 2009 order contemplates an alternative process
11 to resolve objections to any proposed plan in the event that consultation between the parties
12 prior to submission of the plan fails to do so.


13
14 **IT IS SO ORDERED.**

15
16 Dated: 09/11/09

/s/


STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

17
18
19
20 Dated: 09/11/09



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

21
22
23
24 Dated: 09/11/09



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