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

MARCIANO PLATA, et al.,
Plaintiffs,
v.
EDMUND G. BROWN, JR., et al.,
Defendants.

NO. 2:90-cv-0520 LKK JFM P
THREE-JUDGE COURT

NO. C01-1351 TEH
THREE-JUDGE COURT
**ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFFS' MAY 9 AND
AUGUST 22, 2012 MOTIONS**

On May 9, 2012, plaintiffs renewed their motion for an order requiring defendants to demonstrate how they will reduce the California prison population to no more than 137.5% design capacity by June 2013, as required by this Court's June 30, 2011 order. Plaintiffs based their motion on defendants' stated intent to file a motion to modify this Court's order to require that the population be reduced only to 145% design capacity. On August 22, 2012, plaintiffs filed an application for limited discovery and an order to show cause regarding contempt.

1 After reviewing the parties' briefs, including those filed in response to the Court's
2 June 7 and August 3, 2012 orders, the Court is not inclined to entertain a motion to modify
3 the 137.5% population cap based on the factual circumstances identified by defendants. In
4 2009, when the population level in California prisons was at 190% design capacity, this
5 Court made a predictive judgment based on expert testimony that Eighth Amendment
6 compliance could be achieved with a prison population of 137.5% design capacity. The
7 Supreme Court affirmed this determination in 2011, concluding that this Court's

8 weighing of the evidence was not clearly erroneous. The
9 adversary system afforded the court an opportunity to weigh and
10 evaluate evidence presented by the parties. The plaintiffs'
11 evidentiary showing was intended to justify a limit of 130%, and
12 *the State made no attempt to show that any other number would*
13 *allow for a remedy.* There are also no scientific tools available to
14 determine the precise population reduction necessary to remedy a
15 constitutional violation of this sort. *The three-judge court made*
16 *the most precise determination it could in light of the record*
17 *before it.*

18 *Brown v. Plata*, 131 S. Ct. 1910, 1945 (2011) (emphasis added). Our injunction requiring
19 defendants to achieve a prison population of 137.5% design capacity within two years
20 acknowledged and expected that reducing the prison population in the interim would
21 improve medical and mental health care, Aug. 4, 2009 Opinion & Order at 109-10, and
22 further reflected our determination that achieving the 137.5% level was necessary to permit
23 an "efficacious remedy for the unconstitutional care of the sick and mentally ill in
24 California's prisons," *Plata*, 131 S. Ct. at 1939. Defendants' initial briefing suggested that
25 the only question that they would seek to litigate on a motion to modify is whether Eighth
26 Amendment compliance could be achieved with a prison population higher than 137.5%
27 design capacity.¹ That question has already been litigated and decided by this Court and

28 ¹In their response to plaintiffs' application for limited discovery and order to show
cause regarding contempt, defendants appear to recognize that a showing of constitutional
compliance, while not required to extend the deadline for compliance with this Court's order,
is a prerequisite to modification of the population cap. *See* Defs.' Sept. 5, 2012 Resp. at 3
("Defendants may also move to modify the order before the population density reaches
137.5% if there is no longer a constitutional violation in the delivery of medical or mental
health care.").

1 affirmed by the Supreme Court, and this Court is not inclined to permit relitigation of the
2 proper population cap at this time.²

3 The Court will, however, entertain a motion to extend the deadline for compliance
4 with the June 30, 2011 order. Any such motion must be filed within ten days of the filing of
5 any monthly or six-month report indicating that defendants do not expect to achieve the
6 137.5% benchmark by the June 27, 2013 deadline, and must be accompanied by a plan
7 demonstrating how the state will comply with the population cap within the requested
8 extension. The Court is not inclined to grant any extension beyond December 31, 2013, as
9 defendants have indicated at least one method for achieving 137.5% design capacity by that
10 date. *See* Aug. 17, 2012 Meier Decl. ¶ 6.

11 Finally, the Court notes that defendants failed to respond to the following set of
12 questions from its August 3, 2012 order:

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

18 Aug. 3, 2012 Order at 4. Defendants may not ignore an order from this Court, and they shall
19 file a brief answering these questions on or before **September 17, 2012**. The Court makes
20 clear that, at this time, it is ordering defendants neither to implement any particular plan nor
21 to begin developing “a system to identify prisoners who are unlikely to reoffend or who
22 might otherwise be candidates for early release,” *Plata*, 131 S. Ct. at 1947. In answering
23 these questions, defendants shall consider the evidence presented at trial, which this Court
24 found “overwhelmingly showed” that “the state has available methods by which it could
25 readily reduce the prison population to 137.5% design capacity or less without an adverse

26 ²Moreover, given the length of time that remediation efforts have been ongoing in
27 both of the underlying individual cases, as well as the progress suggested by defendants’
28 briefs, it appears to this Court that available time and resources would be better spent
completing correction of the underlying Eighth Amendment violations than in further
contested litigation before this Court.

1 impact on public safety or the operation of the criminal justice system.” Aug. 4, 2009
2 Opinion & Order at 178, 181, *aff’d, Plata*, 131 S. Ct. at 1941-44. Defendants’ response shall
3 also advise the Court which of the available methods identified in the opinion, including the
4 expansion of the good time credits system, as well as any other methods that may be
5 identified by the State, the Governor has the authority to implement under the existing
6 emergency proclamation concerning prison overcrowding. Defendants shall provide a full
7 legal explanation to support any contention that the Governor lacks authority to implement
8 any particular method identified in the August 2009 opinion and order.

9 Plaintiffs’ May 9 and August 22, 2012 motions are GRANTED IN PART and
10 DENIED IN PART consistent with this order. All issues not specifically addressed above
11 are denied without prejudice.

12
13 **IT IS SO ORDERED.**

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15 Dated: 09/07/12



STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

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19 Dated: 09/07/12



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

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23 Dated: 09/07/12



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

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