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 10 IN THE UNITED STATES DISTRICT COURTS
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA
 12 AND THE NORTHERN DISTRICT OF CALIFORNIA
 13 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
 14 PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

15 **RALPH COLEMAN, et al.,**
 16 Plaintiffs,
 17 v.
 18 **EDMUND G. BROWN JR., et al.,**
 19 Defendants.
 20

2:90-cv-00520 LKK DAD P
THREE-JUDGE COURT

21 **MARCIANO PLATA, et al.,**
 22 Plaintiffs,
 23 v.
 24 **EDMUND G. BROWN JR., et al.,**
 25 Defendants.
 26

C01-1351 TEH
THREE-JUDGE COURT
**DEFENDANTS' AMENDED
 APPLICATION AND [PROPOSED]
 ORDER GRANTING DEFENDANTS'
 REQUEST FOR AN EXTENSION OF
 APRIL 18, 2014 DEADLINE**

1 **DEFENDANTS’ AMENDED APPLICATION FOR EXTENSION OF**
2 **THE APRIL 18, 2014 POPULATION REDUCTION DEADLINE**

3 Following the enactment of Senate Bill 105, Defendants filed a request in September 2013
4 to extend the deadline to reduce the population in the State’s 34 adult institutions to 137.5% of
5 design bed capacity to December 31, 2016. (ECF 2713/4803.) The Court directed the parties to
6 meet and confer regarding Defendants’ request, and extended the final population reduction
7 deadline to April 18, 2014. (ECF 2719/4831; 2746/4953; 2752/4978.) The parties engaged in an
8 extensive meet-and-confer process which did not result in a negotiated resolution. During the
9 meet-and-confer process, it became clear that the Court was disinclined to approve a three-year
10 extension, and that additional measures would be needed to secure an extension. Defendants
11 have accordingly modified the length of the requested extension to two years: the minimum
12 length of time needed to allow new reform measures to responsibly draw down the prison
13 population while avoiding the early release of inmates. It also became clear that the Court would
14 require a mechanism for ensuring compliance if the State missed a population reduction
15 benchmark. The proposed order provides for a court-appointed Compliance Officer with the
16 authority to order the release of lower-risk inmates if an interim or final benchmark is missed.

17 To ensure that the State does not find itself in a position of missing a benchmark,
18 Defendants have developed several significant measures intended to protect public safety while
19 establishing a durable framework for reducing the prison population. These measures directly
20 address current and projected impacts on the prison population, such as increased admissions of
21 non-violent second-strike offenders. (*See* [Proposed] Order at ¶ 3(b).) For example, Defendants
22 have proposed a new parole determination process—modeled after Proposition 36 (2012)—
23 through which non-violent second-strikers will be eligible for parole consideration by the Board
24 of Parole Hearings once they have served 50% of their sentence. (*See id.*) Similarly, Defendants
25 will finalize and implement an expanded parole process for medically incapacitated inmates and a
26 new parole process for elderly inmates who have served at least 25 years in prison. (*See id.* at ¶
27 3(d)-(e).) Inmates who are eligible for these parole processes will be granted parole if the Board
28 finds they no longer pose an unreasonable risk to public safety. (*See* Governor’s Budget

1 Summary – 2014-15 at 76-77.) Defendants will also prospectively increase credit-earnings
2 programs for non-violent second strike offenders and minimum custody inmates. (*See id.* at 77;
3 [Proposed] Order ¶ 3(a).)

4 Adopting Defendants’ proposed order will also provide the time and funds necessary to
5 implement Senate Bill 105’s recidivism reduction provisions. (*See* Governor’s Budget Summary
6 – 2014-15 at 74-75 & 90-91.) If the Court grants Defendants’ proposed order, \$81.1 million will
7 be available in Senate Bill 105’s Recidivism Reduction Fund for expenditure in fiscal year 2014-
8 15. (*Id.* at 75.) Senate Bill 105 also amends Senate Bill 678 (2009) by permanently increasing
9 funding to county probation departments for felony diversion programs such as mental health,
10 drug and alcohol abuse treatment, and job training. (*Id.*) Probation departments will receive an
11 estimated \$128 million for felony diversion this upcoming fiscal year. (*Id.* at 75.)

12 If the Court grants Defendants’ request for a two-year extension by adopting the
13 accompanying proposed order, the State will be able to implement several additional significant
14 criminal justice reforms. These reforms will allow Defendants to comply with the population cap
15 without sending thousands more inmates to private prisons in other states. Further, Defendants
16 will not appeal any order concerning compliance with the population cap or subsequent orders
17 necessary to implement Defendants’ proposed order, including an order by a Compliance Officer
18 directing the release of inmates. Defendants respectfully request that the Court approve
19 Defendants’ proposed order and thereby allow the State to continue to develop comprehensive
20 and sustainable population-reduction reforms.

21 Dated: January 23, 2014

KAMALA D. HARRIS
Attorney General of California

22
23 By: /s/ *Patrick R. McKinney*
PATRICK R. MCKINNEY
Supervising Deputy Attorney General
24 *Attorneys for Defendants*

25 Dated: January 23, 2014

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26 By: /s/ *Paul B. Mello*
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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.

2:90-cv-00520 LKK DAD P
THREE-JUDGE COURT

MARCIANO PLATA, et al.,

Plaintiffs,

v.

EDMUND G. BROWN JR., et al.,

Defendants.

C01-1351 TEH
THREE-JUDGE COURT

**[PROPOSED] ORDER GRANTING
DEFENDANTS' REQUEST FOR AN
EXTENSION OF APRIL 18, 2014
POPULATION REDUCTION DEADLINE**

Having read and considered the parties' filings in response to this Court's January 13, 2014 Order, and good cause appearing, the Court GRANTS Defendants' request for an extension of time to comply with this Court's June 30, 2011 Order to reduce California's prison population to 137.5% of design capacity. IT IS HEREBY ORDERED that:

1. The deadline to achieve the ordered reduction in the in-state adult institution population to 137.5% of design bed capacity is extended to February 28, 2016. Defendants will meet the following interim and final population reduction benchmarks:

- (a) 143% of design bed capacity by June 30, 2014;
- (b) 141.5% of design bed capacity by February 28, 2015; and
- (c) 137.5% of design bed capacity by February 28, 2016.

1 2. During the extension period, Defendants may maintain but shall not increase the
2 current population level of approximately 8,900 inmates housed in out-of-state facilities.

3 3. The Court acknowledges that Defendants intend to comply with this Order in part
4 through a combination of contracting for additional in-state capacity in county jails, community
5 correction facilities, and a private prison, and through newly-enacted programs and the
6 development of additional measures to reduce the prison population. Defendants shall also
7 promptly implement the following measures:

- 8 (a) Increase credits prospectively for non-violent second-strike offenders and
9 minimum custody inmates. Non-violent second-strikers will be eligible to earn
10 good-time credits at 33.3% and will be eligible to earn milestone credits for
11 completing rehabilitative programs. Minimum custody inmates will be eligible to
12 earn 2-for-1 good-time credits to the extent such credits do not deplete
13 participation in fire camps where inmates also earn 2-for-1 good-time credits;
- 14 (b) Create and implement a new parole determination process through which non-
15 violent second-strikers will be eligible for parole consideration by the Board of
16 Parole Hearings once they have served 50% of their sentence;
- 17 (c) Parole inmates serving indeterminate sentences who have already been granted
18 parole by the Board of Parole Hearings but have future parole dates;
- 19 (d) In consultation with the Receiver's office, finalize and implement an expanded
20 parole process for medically incapacitated inmates;
- 21 (e) Finalize and implement a new parole process whereby inmates who are 60 years of
22 age or older and have served a minimum of twenty-five years of their sentence
23 will be referred to the Board of Parole Hearings to determine suitability for parole;
- 24 (f) Activate new reentry hubs at a total of 13 designated prisons to be operational
25 within one year from the date of this Order;
- 26 (g) Pursue expansion of pilot reentry programs with additional counties and local
27 communities; and
- 28 (h) Implement an expanded alternative custody program for female inmates.

1 4. Defendants will report to the Court monthly on the status of measures being taken to
2 reduce the prison population. The first report shall be submitted on the 15th of the month
3 following the date of this Order and shall continue until further order of the Court.

4 5. The Court will appoint a Compliance Officer for the sole purpose, if necessary, of
5 bringing Defendants into compliance with any missed benchmark by ordering inmate releases.
6 The Compliance Officer's duties and authority will be strictly limited to identifying and ordering
7 the release of lower-risk inmates. The Compliance Officer will have no monitoring or oversight
8 duties, may not direct CDCR to implement any prison population reduction reforms, and will not
9 issue any reports or express any views concerning the impact of the inmate population level. If
10 compliance with any benchmark is not achieved within a 60-day period following the expiration
11 of any missed benchmark, the Compliance Officer shall, within seven days, direct the release of
12 the number of inmates necessary to achieve compliance with the missed benchmark.

13 (a) In selecting inmates for release, the Compliance Officer shall consider public
14 safety by minimizing any risk of violent re-offense. The Compliance Officer shall
15 not be authorized to order the release of condemned inmates or inmates serving a
16 term of life without the possibility of parole;

17 (b) The Compliance Officer shall have access to all necessary CDCR data and
18 personnel regarding the California prison population, including population
19 projections, risk assessments, recidivism data, statistical data, and prisoner files,
20 and shall receive administrative support from CDCR to the extent needed to carry
21 out the Compliance Officer's duties; and

22 (c) The Compliance Officer shall not be compensated for any work or services unless
23 and until a benchmark has been missed, and compensable services or work will
24 cease as soon as compliance with the missed benchmark has been achieved
25 through releases done at the Compliance Officer's direction or additional measures
26 taken by Defendants. Defendants shall reasonably compensate the Compliance
27 Officer on an hourly basis, and the provisions of 18 U.S.C. section 3626(f) shall
28 not apply.

1 Within 60 days of this Order, Plaintiffs and Defendants shall each submit a list of two candidates
2 to serve as Compliance Officer. The Court shall appoint the Compliance Officer from the
3 candidates submitted.

4 6. To the extent that any state statutory, constitutional, or regulatory provisions, except
5 the California Public Resources Code, impede the implementation of this Order or Defendants'
6 ability to achieve the population reduction benchmarks, all such laws and regulations are waived.
7 Although the Court does not issue a general waiver of the Public Resources Code, Defendants
8 may request waivers, as the need arises, of these statutory provisions that are tailored to specific
9 projects.

10 IT IS SO ORDERED.

12 Dated: _____

STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

16 Dated: _____

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

20 Dated: _____

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

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