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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 JFM 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' NOVEMBER 2012
 STATUS REPORT AND MOTION TO
 MODIFY JUNE 30, 2011 ORDER
 REQUIRING INTERIM REPORTS**

1 Defendants submit this monthly status report on the state prison population and move to
2 modify the Court's June 30, 2011 Order Requiring Interim Reports (Dkt. Nos. 2374/4032).
3 Exhibit A sets forth the current design bed capacity, population, and population as a percentage of
4 design bed capacity for each state prison and for all state prisons combined.¹ Exhibit A shows
5 that as of November 7, 2012, 120,174 inmates were housed in the state's 33 adult institutions,
6 which amounts to 150.7% of design bed capacity.² Since October 2011 when the State
7 implemented historic public safety realignment under Assembly Bill 109, Defendants have
8 successfully reduced the population in the State's 33 institutions by 24,063 inmates. (*See*
9 Defendants October 14, 2011 report, Dkt. Nos. 2407-1/4099-1.)

10 The in-state prison population has remained basically unchanged over the last two months,
11 and Defendants now believe that the population will end up slightly above the 147% benchmark
12 by the current December 27, 2012 target date. (Declaration of Ross Meier, ¶ 3.) The CDCR is
13 presently developing plans to reduce the population in the State's 33 institutions to 137.5% of
14 design bed capacity, as required by the Court's October 11, 2012 Order to Develop Plans to
15 Achieve Required Prison Population Reduction (Dkt. Nos. 2485/4251). (*Id.*) These plans will
16 account for any appropriate revisions in population projections based on recent population trends.
17 (*Id.*) The parties are scheduled to meet to discuss their proposed plans on November 29, 2012.
18 (*Id.* at ¶ 4.) Defendants will submit those plans to the Court as required by the Court's order.
19 (*Id.*)

20 To permit Defendants to develop the court-ordered plans and avoid unnecessary litigation
21 over the current benchmarks, Defendants move the Court to modify its June 30, 2011 Order
22
23

24 ¹ Although Exhibit A reports design capacity and actual population in the aggregate and
25 by institution, Defendants note that the Supreme Court recognized that the Court's order affords
26 "the State flexibility to accommodate differences between institutions" and there is "no
requirement that every facility comply with the 137.5% limit." *Brown v. Plata*, 563 U.S. ____,
131 S. Ct 1910, 1940-41 (2011).

27 ² The data in Exhibit A is taken from CDCR's November 12, 2012 weekly population
28 report, available on CDCR's Web site at http://www.cdc.ca.gov/Reports_Research/Offender_Information_Services_Branch/Population_Reports.html, and the July 11, 2012 Declaration of
Ross Meier (Dkt. Nos. 2454/4211).

1 Requiring Interim Reports.³ This motion is consistent with the Court's October 11 order, as well
2 as the Court's September 7, 2012 order which stated that the Court would "entertain a motion to
3 extend the deadline for compliance with the June 30, 2011 order." (Dkt. Nos. 2473/4235.)
4 Defendants' motion is also consistent with the United States Supreme Court's decision that this
5 Court must remain open to requests for an extension of time to achieve the required population
6 reduction. *Plata*, 131 S. Ct. at 1946-47. The requested extension of time is particularly
7 appropriate here because Defendants have reduced the in-state prison population by nearly 42,000
8 inmates since November 2006 and by more than 24,000 inmates since implementing realignment.

9 Accordingly, Defendants request that the Court modify the final two benchmarks in the
10 June 30, 2011 order as follows:

11 Defendants must reduce the population of California's thirty-three
12 adult prisons as follows:

13 c. To no more than 147% of design capacity by June 27, 2013.

14 d. To no more than 137.5% of design capacity by December 27,
15 2013.

16 Consistent with these modifications, it would no longer be necessary to develop plans to achieve
17 the 137.5% level by June 27, 2013. Accordingly, if the requested modifications are adopted,
18 Defendants request that the directive to develop plans in the October 11 order be modified so that
19 the parties only need to develop and submit plans to achieve the 137.5% level by December 27,
20 2013. Defendants also request that the Court not require Defendants to submit a report fourteen
21 days after the current December 27, 2012 benchmark. Instead, Defendants should be required to
22 submit benchmark reports fourteen days after the revised June 27 and December 27, 2013
23 benchmarks.

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28 ³ Although Defendants currently move only to extend the time for compliance, Defendants reserve the right to move to modify the population reduction benchmarks in the future.

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Dated: November 15, 2012

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