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10 **UNITED STATES DISTRICT COURT**

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.

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

THREE-JUDGE COURT

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

No. C01-1351 TEH

THREE-JUDGE COURT

**DEFENDANTS' REPORT IN RESPONSE
 TO JUNE 30, 2011 ORDER**

1 Defendants file this report in response to the Court's June 30, 2011 order, which
2 directed them to provide updated information about public safety realignment under
3 Assembly Bill 109. Specifically, the Court directed Defendants to file a report on or
4 before July 21, 2011, to address the following issues: (1) whether funding has been
5 secured for AB 109; and, if so, when AB 109 is intended to go into effect; (2) the
6 estimated reductions associated with AB 109 and all other population reduction
7 measures being implemented by the State; and (3) whether Defendants expect to meet
8 the December 27, 2011 population-reduction benchmark and, if not, what further actions
9 are contemplated and the specific persons responsible for executing those actions.
10 (Order Requiring Interim Reports at 2, June 30, 2011, *Plata* ECF No. 2374.)

11 In this filing, Defendants answer the Court's questions about AB 109's funding
12 and effective date. They will also provide their best current projection of the impact AB
13 109 and other measures will have on the prison population. But Defendants will have a
14 more current population projection completed in a few weeks, and will file a more
15 complete report with those updated projections in early August. Once finished, the
16 updated projections will allow Defendants to assess whether they expect to meet the
17 Court's first benchmark on December 27, 2011, whether modifications to the benchmark
18 schedule may be warranted, or whether any potential additional crowding-reductions
19 measures may be needed or appropriate.

20 As for now, the short answers to the Court's questions are that AB 109 is now
21 funded and will go into effect on October 1, 2011. While CDCR has not yet finished its
22 population projections, CDCR preliminarily estimates that as of December 27, 2011, the
23 in-state prison population will be reduced by approximately 8,400 inmates. CDCR also
24 preliminarily estimates that its in-state institution population will achieve 167% of design
25 capacity around January 27, 2012, one month after the Court's December 27, 2011
26 benchmark.

1 **I. AB 109 Has Been Funded and Will Become Effective October 1, 2011.**

2 As Defendants advised the Court in their earlier reports, this Spring, the
3 Legislature passed and the Governor signed into law Assembly Bill 109. (Defs.' Report
4 in Response to Jan. 12, 2010 Order at 2-3, 6, June 7, 2011, Plata ECF No. 2365; Defs.'
5 Report Responding to Paragraph 5 of Jan. 12, 2010 Order at 2-3, June 23, 2011, Plata
6 ECF No. 2370.) On June 30, 2011, the Governor made this realignment a reality by
7 signing into law the funding for AB 109. (See AB 118, Act of June 30, 2011, ch. 40, § 3
8 (to be codified at Cal. Gov't Code § 30025 et seq.).)

9 **A. Funding**

10 AB 118 provides the statutory framework, allocation method, and revenue to
11 implement AB 109. Specifically, AB 118 establishes the Community Corrections Grant
12 Program, which was required for AB 109 to become operational. (AB 118, § 3.) It
13 creates the Local Revenue Fund of 2011 in the State Treasury, and within the fund
14 numerous sub-accounts, including the Trial Court Security Account, the Local
15 Community Corrections Account, the Local Law Enforcement Services Account, the
16 Mental Health Account, the District Attorney and Public Defender Account, the Juvenile
17 Justice Account, the Health and Human Services Account, and the Reserve Account.
18 (AB 118, § 3.)

19 Funding for the Local Revenue Fund of 2011 shall come from 1.0625% of the
20 existing sales tax rate, which is projected to generate \$5.1 billion in the 2011-12 fiscal
21 year and increases to \$6.4 billion in the 2014-15 fiscal year. (AB 118, § 9 (to be codified
22 at Cal. Revenue and Taxation Code § 6051.15); 2011-12 State Budget, at 2,
23 <http://www.ebudget.ca.gov/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf> (last
24 visited July 20, 2011).) The fund is continuously appropriated. (AB 118, § 3.)

25 **B. Effective Date**

26 The effective date of most of AB 109 is October 1, 2011. (See, e.g., AB 117, §§
27 2-3, 27-28, 37, 39, 45, 47, 52-53.) This date allows CDCR and county officials time to
28 prepare for realignment. (Don Thompson, *Calif. budget provides money for prison*

1 *changes*, San Jose Mercury News, July 4, 2011 at
2 http://www.mercurynews.com/breaking-news/ci_18406445 (last visited July 20, 2011)
3 (citing to Sen. Mark Leno.)

4 On October 1, state law will change so that most criminals convicted of a non-
5 serious, non-violent, or non-registerable sex crime will be incarcerated in a county jail
6 instead of in a CDCR prison. (AB 117 §§ 27-28 (to be codified in Cal. Pen. Code §
7 1170).)

8 Also, as of October 1, inmates whose current commitment offense is non-serious,
9 non-violent, and who have not been classified as high-risk sex offenders will be
10 supervised by the counties, not CDCR, when they are released from custody. (AB 117 §
11 37 (to be codified in Cal. Pen. Code § 3000.08); § 47 (to be codified in Cal. Pen. Code §
12 3451).) Revocation proceedings of these individuals will be conducted by hearing
13 officers appointed by the Superior Courts and revocation sentences will be served in
14 county jails, not in CDCR prisons. (AB 117 § 1 (to be codified in Cal. Gov't Code §
15 71622.5); § 38 (to be codified in Cal. Penal Code § 3000.08); § 44 (to be codified in Cal.
16 Penal Code § 3056); § 50 (to be codified in Cal. Penal Code § 3455).)

17 And as of July 1, 2013, inmates serving prison terms for serious or violent felonies
18 or who have been classified as high-risk sex offenders shall be subject to county
19 revocation proceedings in the Superior Court upon release from state prison. (AB 117 §
20 38.)

21 **II. Defendants Are Providing Projections of the Impact AB 109 Will Have on the**
22 **Prison Population Based on Currently Available Data, and Will Provide A**
23 **Better Projection When Completed in a Few Weeks.**

24 The impact that AB 109 will have on CDCR's prison population will be significant.
25 Currently, CDCR houses in its 33 prisons 13,371 non-lifers serving a revocation
26 sentence or pending a revocation hearing and 18,597 inmates serving lower level
27 offenses that are non-serious, non-violent, and non-sex related. (Decl. of Jay Atkinson
28 in Support of Defs.' Report in Response to June 30, 2011 Order (Atkinson Decl.) ¶ 9.)
Once AB 109 has been fully implemented, these categories of inmates will not be

1 housed in CDCR prisons. (See AB 117 §§ 1, 27-28, 38, 44, 50.) As an illustration of AB
2 109's potential impact, if CDCR subtracted these 31,968 inmates from its current in-state
3 prison population of 144,237, the population would be reduced to 112,269. (Atkinson
4 Decl. ¶ 9.) So if its full impact was realized today, and if all other things remained equal,
5 AB 109 alone would reduce the prison population to 141% of design capacity. (*Id.*)

6 Of course, it will take a few years to realize the significant impact of AB 109,
7 during which time all other things will not remain equal. (Atkinson Decl. ¶ 10.) For
8 example, as previously reported, in the next few years, the reforms enacted through SB
9 18, SB 1266, and SB 1399 will continue to reduce prison crowding, and CDCR's housing
10 capacity will increase as its construction projects are completed. (*Id.*; Defs.' Report in
11 Response to Jan. 12, 2010 Order at 4-6, June 7, 2011, *Plata* ECF No. 2365.) At the
12 same time, CDCR's available trend data indicates that the number of inmates not
13 impacted by realignment will grow over the next two years. (Atkinson Decl. ¶ 10.) Thus,
14 it is difficult to project future population levels with precision. (*Id.* ¶ 8.) But Defendants
15 believe, based on CDCR's preliminary projections, the impact of realignment coupled
16 with the other crowding-reduction measures will allow the state to achieve the final
17 benchmark set by the Court. (Decl. of Ross Meier in Support of Defs.' Report in
18 Response to June 30, 2011 Order (Meier Decl.) ¶ 3.)

19 In a few weeks, CDCR will have more current population projections. (Meier
20 Decl. ¶ 4; Atkinson Decl. ¶¶ 4-6.) These projections will take into account more recent
21 population numbers, the final legislative modifications to AB 109, and better data
22 assessing the impact of other recent population reduction measures. (Atkinson Decl. ¶¶
23 7-8.) CDCR is working to have these new projections finished by early August. (Meier
24 Decl. ¶ 4; Atkinson Decl. ¶ 4.) Once completed, Defendants will provide them to the
25 Court in an updated report. These updated projections will allow Defendants to better
26 address the Court's questions about whether Defendants expect to meet the first
27 benchmark on December 27, 2011, and about whether other potential crowding-
28 reduction measures are necessary or appropriate. Defendants will also advise the Court

1 if modifications to the benchmark schedule appear to be warranted.

2 Before CDCR can finalize these new projections, it must first complete its Fall
3 2011 projection, develop a supplemental projection to account for AB 109, and develop
4 a population management plan. (Atkinson Decl. ¶ 5.) The Fall 2011 projections take
5 into account many variables and recent trends affecting population. (*Id.*) After starting
6 with CDCR's June 30, 2011 population, CDCR forecasts population levels by using
7 recent data trends, projecting new admissions, and estimating how long inmates will
8 remain in prison. (*Id.*) While CDCR ordinarily issues its Fall projections at the end of
9 August, it is expediting efforts to complete these projections by early August. (*Id.* ¶ 4.)
10 After the Fall 2011 projections are completed, CDCR can better project the impact that
11 AB 109 will have on its population (*id.* ¶ 8), and determine how best to provide housing.
12 (Meier Decl. ¶¶ 3-4.)

13 In the meantime, CDCR has developed preliminary projections based on older
14 population numbers and the data available now. (Meier Decl. ¶ 3.) These preliminary
15 projections indicate that CDCR's in-state institution population will be 135,263 inmates
16 on December 27, 2011, or 170% of design capacity. (*Id.*) This is a projected reduction
17 of approximately 8,400 inmates compared to today's in-state institution population. (*Id.*)
18 This forecast indicates that CDCR will achieve 167% of design capacity in its in-state
19 institutions around January 27, 2012. (*Id.*)

20 The finalized population estimates that Defendants will provide the Court in a few
21 weeks will offer a better forecast. (Atkinson Decl. ¶¶ 7-8.) The Fall 2011 projection will
22 use the CDCR inmate population from June 30, 2011, rather than the less current
23 population numbers from December 31, 2010. (*Id.* ¶ 7.) Further, the Fall 2011
24 projection benefits from contrasting the Spring 2010 projection with actual experience
25 and data trends over the past six months. (*Id.*) The new projection that CDCR will have
26 completed in early August using the June 2011 population numbers will provide a better
27 forecast of AB 109's impact because it will take into account seasonal variations from the
28 revised October 1 implementation date. (*Id.* ¶ 8.) Further, it will take into account recent

1 realignment legislative changes that did not exist when the prior projection was
2 prepared. (*Id.* ¶ 8.)

3 **III. Conclusion**

4 AB 109 is now funded and will go into effect on October 1, 2011. While it is too
5 early to have finalized population projections, CDCR preliminarily estimates that as of
6 December 27, 2011, the in-state prison population will be reduced by approximately
7 8,400 inmates. CDCR also preliminarily estimates that its in-state institution population
8 will achieve 167% of design capacity around January 27, 2012, one month after the
9 Court's December 27, 2011 benchmark. Defendants will file a supplement to this report
10 in early August after the final population projections are completed, and, at that time, will
11 provide the Court with a fuller answer to whether Defendants expect to meet the Court's
12 December 27, 2011 benchmark.

13 DATED: July 20, 2011

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18 DATED: July 20, 2011

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