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2 IN THE UNITED STATES DISTRICT COURTS  
3 FOR THE EASTERN DISTRICT OF CALIFORNIA  
4 AND THE NORTHERN DISTRICT OF CALIFORNIA  
5 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES  
6 PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE  
7

8 RALPH COLEMAN, et al.,  
9 Plaintiffs,  
10 v.  
11 EDMUND G. BROWN JR., et al.,  
12 Defendants.

NO. CIV S-90-0520 LKK JFM P  
**THREE-JUDGE COURT**

13  
14 MARCIANO PLATA, et al.,  
15 Plaintiffs,  
16 v.  
17 EDMUND G. BROWN JR., et al.,  
18 Defendants.

NO. C01-1351 TEH  
**THREE-JUDGE COURT**  
**ORDER RE: DEFENDANTS’**  
**JANUARY 7, 2013 MOTION TO**  
**VACATE OR MODIFY**

19  
20 On January 7, 2013, defendants filed in this Court a motion to vacate or modify  
21 (“Three-Judge Motion”) our June 30, 2011 Order requiring defendants to achieve a prison  
22 population of 137.5% design capacity by June 27, 2013. Concurrently, defendants filed a  
23 motion to terminate prospective relief in the *Coleman v. Brown* litigation (“*Coleman*  
24 *Motion*”). Defendants did not, however, file a similar motion in the *Plata v. Brown*  
25 litigation. Plaintiffs have not yet filed a response to the Three-Judge Motion, even though –  
26 under our April 25, 2008 Order – a response was due on January 22, 2013.

27 One of defendants’ principal contentions in the Three-Judge Motion is that there are  
28 no ongoing systemwide constitutional violations in medical and mental health care.

1 Defendants also make this argument with respect to mental health care to the *Coleman* court  
2 in the *Coleman* Motion. Defendants have not, however, made a similar argument with  
3 respect to medical care to the *Plata* court and have not formally advised this Court whether  
4 they intend to do so in the near future. It would be a waste of judicial resources for this  
5 Court to begin to determine any issue until it is made aware of defendants' filing plans  
6 regarding the constitutional question. Accordingly, this Court directs defendants to answer  
7 the following questions:

- 8 1. Do defendants intend to file a motion to terminate in the *Plata* litigation,  
9 contending that there are no longer ongoing systemwide constitutional  
10 violations with respect to medical care?
- 11 2. If so, when do defendants intend to file such a motion?

12 Defendants must respond within 14 days of the filing of this order. Pending further order of  
13 this Court, our consideration of the Three-Judge Motion is STAYED.

14 Notwithstanding this stay, this Court directs plaintiffs to file a response to the Three-  
15 Judge Motion within 14 days of the filing of this order. Plaintiffs should include declarations  
16 to respond to the contentions made by defendants. Plaintiffs shall also show good cause for  
17 their failure to file a response by the January 22, 2013 deadline. Defendants shall file a reply  
18 to plaintiffs' response within 21 days of the filing of this order.

19 This Court's June 30, 2011 Order remains in effect pending our determination of these  
20 issues, and defendants are reminded of their obligation to continue to comply with its terms  
21 and provisions. Neither defendants' filings of the papers filed thus far nor any motions,  
22 declarations, affidavits, or other papers filed subsequently shall serve as a justification for  
23 their failure to file and report or take any other actions required by this Court's Order.

24 Defendants have advised us, however, that they are unable to meet the 137.5% prisoner  
25 population cap by June 2013 but that they will be able to do so essentially by December 31,  
26 2013. Accordingly, this Court modifies the June 30, 2011 Order by GRANTING defendants  
27 a six-month extension in which to comply with its terms and provisions. Defendants are now


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1 required to achieve the 137.5% prisoner population cap by December 31, 2013. Defendants  
2 shall take all steps necessary to comply with the Order as amended.

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**IT IS SO ORDERED.**


Dated: 01/29/13

  
STEPHEN REINHARDT  
UNITED STATES CIRCUIT JUDGE  
NINTH CIRCUIT COURT OF APPEALS

Dated: 01/29/13

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

Dated: 01/29/13

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