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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 RALPH COLEMAN, et al.,

12 Plaintiffs,

13 v.

14 GAVIN NEWSOM, et al.,

15 Defendants.  
16

No. 2:90-cv-0520 KJM DB P

ORDER

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18 This matter is set for the second regular quarterly status conference of this year on  
19 July 17, 2020 at 10:00 a.m. For the reasons explained below, and good cause appearing, the  
20 parties will be directed to file, on or before July 15, 2020, briefing responsive to the following  
21 questions, identifying issues that will appear on the agenda for the status conference. The issues  
22 may frame the court's consideration of how best to resume Program Guide enforcement,  
23 including but not limited to enforcement of its orders regarding compliance with defendants'  
24 2009 staffing plan, under the circumstances the state's prisons are facing with the extremely  
25 troubling advance of the COVID-19 pandemic.

- 26 1. Whether increased clustering of members of the plaintiff class, particularly at  
27 the Enhanced Outpatient Program (EOP) and higher levels of care, is a feasible  
28 option for achieving full and durable compliance with the Program Guide and

1 other remedial requirements of this action sooner rather than later, given that  
2 clustering could be expected to reduce the need for transfers within the prison  
3 system to achieve compliance. The briefing on this issue should include  
4 discussion of available clustering options and whether any of those options can  
5 be achieved during the COVID-19 pandemic through application of best  
6 practices defined by reputable public health authorities. In considering this  
7 issue, in addition to any other matter the parties may brief, they should address  
8 whether *Plata v. Brown*, 427 F.Supp.3d 1211 (N.D. Cal. 2013), serves as  
9 authority for the proposition that this court sitting as a single judge court may  
10 sua sponte enter an order directing defendants to submit a clustering plan and  
11 to order implementation of that plan at such time as best public health practices  
12 indicate it is safe to do so.

- 13 2. Whether defendants are or soon will be planning for additional voluntary  
14 releases or sentencing reforms that would reduce the size of the plaintiff class  
15 in sufficient numbers to achieve full and durable compliance with the Program  
16 Guide and other remedial requirements of this action sooner rather than later.  
17 If defendants are so planning, do they have a targeted occupancy rate for which  
18 they are aiming that will facilitate compliance concurrently with  
19 implementation of best practices in management of COVID-19.
- 20 3. If the answer to the second question above is no, and if Program Guide  
21 compliance cannot be achieved without a greater number of population  
22 reductions than currently planned, whether this court should sua sponte request  
23 the convening of a three-judge court to consider entry of a prisoner release  
24 order specifically directed to reduce the number of *Coleman* class members in  
25 the California Department of Corrections and Rehabilitation. *See* 18 U.S.C.  
26 § 3626(a)(3)(D) (“ If the requirements under subparagraph (A) have been met,  
27 a Federal judge before whom a civil action with respect to prison conditions is  
28 pending who believes that a prison release order should be considered may sua

spontaneous request the convening of a three-judge court to determine whether a prisoner release order should be entered.”); *see also* 18 U.S.C. § 3626(a)(3)(A) (setting out requirements that “(i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and (ii) the defendant has had a reasonable time to comply with the previous court orders”). Here, “the previous order requirement of § 3626(a)(3)(A)(i) was satisfied . . . by appointment of a Special Master in 1995 . . . [which was] intended to remedy the constitutional violations . . . [and which has] been given ample time to succeed.” *Brown v. Plata*, 563 U.S. at 514. The parties may, as appropriate, include their discussion of the requirements of 18 U.S.C. § 3626(a)(3)(A) in the briefing required by this order.

IT IS SO ORDERED.

DATED: July 2, 2020.

  
CHIEF UNITED STATES DISTRICT JUDGE