

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.

NO. 2:90-cv-0520 LKK JFM P  
THREE-JUDGE COURT

MARCIANO PLATA, et al.,  
Plaintiffs,  
v.  
EDMUND G. BROWN JR., et al.,  
Defendants.

NO. C01-1351 TEH

**THREE-JUDGE COURT**

**ORDER DENYING**  
**DEFENDANTS' MOTION TO**  
**STAY JUNE 20, 2013 ORDER**

19 On June 20, 2013, this Court issued an Opinion and Order once again directing  
20 defendants to comply with our August 2009 Population Reduction Order by reducing the  
21 prison population to 137.5% design capacity by December 31, 2013. June 20, 2013 Op. &  
22 Order (ECF No. 2659/4662).<sup>1</sup> The Population Reduction Order, although almost four years  
23 old, has still not been complied with by defendants. On June 28, 2013, defendants requested  
24 a stay of the June 20 Order pending appeal to the United States Supreme Court. Defs.' Mot.

26       <sup>1</sup> All filings in this Three-Judge Court are included in the individual docket sheets of  
27 both *Plata v. Brown*, No. C01-1351 TEH (N.D. Cal.), and *Coleman v. Brown*, No. 90-cv-  
28 520-LKK (E.D. Cal.). In this Order, when we cite to these filings, we list the docket number  
in *Plata* first, then *Coleman*. When we cite to filings in the individual cases, we include the  
docket number and specify whether the filing is from *Plata* or *Coleman*.

1 to Stay (ECF No. 2665/4673). For the reasons set forth below, we DENY defendants'  
2 motion for a stay.

3 It is worth stating at the outset that by its underlying appeal defendants (sometimes  
4 referred to as "the State") seek to relitigate a thoroughly reasoned decision of the Supreme  
5 Court, *Brown v. Plata*, issued two years ago. That decision holds that within two years the  
6 State must reduce its prison population to 137.5% of design capacity because, when a higher  
7 number of prisoners is confined in the prisons, the prison conditions result in medical and  
8 mental health care that violates the Eighth Amendment. 131 S. Ct. 1910 (2011). Because of  
9 the State's resistance to complying with that decision, and in order to avoid the necessity of  
10 contempt proceedings against the Governor and other state officials, this Three-Judge Court  
11 has repeatedly declined to initiate such proceedings and has even *sua sponte* extended the  
12 time for defendants to comply with the Population Reduction Order issued in conformity  
13 with *Brown v. Plata*. This Court has repeatedly directed defendants to adopt specific plans  
14 that will serve to reduce the prison population to the designated figure by the specified date.  
15 Until now, the State has insisted that it is unable (read unwilling) to comply with the  
16 Population Reduction Order. In the present motion, however, it has finally acknowledged  
17 that it will comply if the Supreme Court denies the stay it will request from that Court.  
18 Defs.' Mot. to Stay at 2 (ECF No. 2665/4673). Accordingly, with anticipation that the  
19 Supreme Court's denial of the stay will finally bring defendants into compliance with the  
20 Population Reduction Order and the Eighth Amendment (subject to the durability of its  
21 compliance), we further explain our reasons for denying defendants' motion.

22

23 **I. PROCEDURAL HISTORY**

24 The history of this litigation is of defendants' repeated failure to take the necessary  
25 steps to remedy the constitutional violations in its prison system, violations that have still not  
26 been remedied after 23 years. The litigation began with two separate class actions. The first,  
27 *Coleman v. Brown*, began in 1990 and concerns California's failure to provide  
28 constitutionally adequate mental health care to its prison population. The second, *Plata v.*

1 *Brown*, began in 2001 and concerns California's failure to provide constitutionally adequate  
 2 medical care to its prison population. The district courts in both cases found constitutional  
 3 violations and ordered injunctive relief. In 1995, in *Coleman*, the district court found that  
 4 defendants were violating the Eighth Amendment rights of mentally ill prisoners. *Coleman*  
 5 *v. Wilson*, 912 F. Supp. 1282 (E.D. Cal. 1995). The court appointed a Special Master to  
 6 supervise defendants' efforts to remedy the constitutional violations. *Id.* at 1323-24. In  
 7 2005, in *Plata*, after a stipulated injunction failed to remedy the Eighth Amendment  
 8 violations, the district court placed defendants' prison medical care system in a receivership.  
 9 Oct. 3, 2005 FF&CL, 2005 WL 2932253, at \*31. Now, 23 years later in one case and 12  
 10 years later in the other, despite the extensive efforts we have made to bring about compliance  
 11 with our Population Reduction Order, which has been approved by the Supreme Court,  
 12 defendants remain delinquent.

13       “After years of litigation, it became apparent that a remedy for the constitutional  
 14 violations would not be effective absent a reduction in the prison system population.” *Plata*,  
 15 131 S. Ct. at 1922. In 2006, the *Coleman* and *Plata* plaintiffs independently filed motions to  
 16 convene a three-judge court capable of issuing a population reduction order under the PLRA.  
 17 Both motions were granted, and on July 26, 2007, the cases were assigned to the same Three-  
 18 Judge Court, made up of the district judges overseeing *Plata* and *Coleman* and one circuit  
 19 judge appointed in conformance with Court Rules by the Chief Judge of the Circuit. After a  
 20 fourteen-day trial, this Three-Judge Court issued a 184-page opinion ordering defendants to  
 21 reduce the institutional prison population to 137.5% design capacity within two years.  
 22 Aug. 4, 2009 Op. & Order (ECF No. 2197/3641) (“Population Reduction Order”).

23       In issuing the Population Reduction Order, this Court found that “no relief other than  
 24 a prisoner release order is capable of remedying the constitutional deficiencies at the heart of  
 25 these two cases,” *id.* at 119, and that “there was overwhelming agreement among experts for  
 26 plaintiffs, defendants, and defendant-intervenors that it is ‘absolutely’ possible to reduce the  
 27 prison population in California safely and effectively,” *id.* at 137. We did not instruct  
 28 defendants *how* to reduce the prison population. We left this question to defendants but

1 ordered them to submit a plan for compliance within 45 days of our Population Reduction  
2 Order. *Id.* at 183. Defendants did not comply; they submitted a plan for reducing the  
3 population to 137.5% within five years, not two. Defs.' Population Reduction Plan (ECF No.  
4 2237/3678). This Court ordered defendants to comply by providing a two-year plan.  
5 Oct. 21, 2009 Order Rejecting Defs.' Proposed Population Plan (ECF No. 2269/3711).  
6 Defendants responded with a plan for compliance by which they would reduce the prison  
7 population to 167%, 155%, 147%, and 137.5% at six-month benchmarks. Defs.' Response  
8 to Three-Judge Court's Oct. 21, 2009 Order (ECF No. 2274/3726). On January 12, 2010,  
9 this Court issued an order accepting defendants' two-year timeline, but stayed the date of the  
10 order while defendants appealed to the Supreme Court. Jan. 12, 2010 Order to Reduce  
11 Prison Population (ECF No. 2287/3767).

12 In June 2011, the Supreme Court affirmed this Court's Population Reduction Order,  
13 holding that "the court-mandated population limit is necessary to remedy the violation of  
14 prisoners' constitutional rights." *Plata*, 131 S. Ct. at 1923. Although the Population  
15 Reduction Order, the Supreme Court stated, was "of unprecedented sweep and extent," and  
16 the release of prisoners a matter of "undoubted, grave concern," so too "is the continuing  
17 injury and harm resulting from these serious constitutional violations." *Id.* The Supreme  
18 Court rejected defendants' argument that a population reduction order was not required  
19 because the overcrowding could be eliminated through construction and other efforts. The  
20 Supreme Court called such options "chimerical," *id.* at 1938-39, and noted that defendants'  
21 troubled history in this litigation belied placing trust in them. The Supreme Court said:

22 Attempts to remedy the violations in *Plata* have been ongoing for  
23 9 years. In *Coleman*, remedial efforts have been ongoing for 16.  
24 At one time, it may have been possible to hope that these  
25 violations would be cured without a reduction in overcrowding.  
A long history of failed remedial orders, together with substantial  
evidence of overcrowding's deleterious effects on the provision  
of care, compels a different conclusion today.

26 *Id.* at 1939. The Supreme Court also rejected defendants' argument that population reduction  
27 would adversely affect public safety, citing this Court's extensive factual findings to the  
28 contrary. *Id.* at 1942-43. The Supreme Court specifically endorsed expanding good time

1 credits, stating that “[e]xpansion of good time credits would allow the State to give early  
2 release to only those prisoners who pose the least risk of reoffending,” *id.* at 1943, and cited  
3 positive evidence from other jurisdictions that had successfully implemented good time  
4 credits, *id.* at 1942-43. The Supreme Court concluded that “[t]he relief ordered by the three-  
5 judge court is required by the Constitution and was authorized by Congress in the PLRA,”  
6 and ordered defendants to “implement the order without further delay.” *Id.* at 1947.

7 Following the Supreme Court’s decision, this Court mandated a two-year schedule for  
8 defendants to reduce the prison population to 137.5% design capacity: 167% design capacity  
9 by December 27, 2011; 155% design capacity by June 27, 2012; 147% design capacity by  
10 December 27, 2012; and 137.5% design capacity by June 27, 2013. June 30, 2011 Order  
11 Requiring Interim Reports at 1-2 (ECF No. 2375/4032). Defendants responded by informing  
12 this Court that they would reach these benchmarks primarily through “Realignment,” a  
13 measure authorized by Assembly Bill 109 that shifted criminals who had committed “non-  
14 serious, non-violent, and non-registerable sex crimes” from state prisons to county jails.  
15 Defs.’ Resp. to Jan. 12, 2010 Court Order (ECF No. 2365/4016). Realignment went into  
16 effect in October 2011 and enabled defendants to comply with the first benchmark shortly  
17 after the December 27, 2011 deadline. Defs.’ Jan. 6, 2012 Status Report (ECF No.  
18 2411/4141).

19 It soon became apparent, however, that Realignment alone would not be sufficient to  
20 meet the 137.5% design capacity benchmark by June 2013. In February 2012, plaintiffs filed  
21 a motion asking defendants to show cause as to how they would reach this benchmark. They  
22 insisted that based on the California Department of Corrections and Rehabilitation’s  
23 (“CDCR’s”) own Fall 2011 population projections, defendants would not meet the  
24 benchmark. Pls.’ Mot. for an Order Requiring Defs. to Demonstrate How They Will  
25 Achieve the Required Population Reduction by June 2013 at 2-3 (ECF No. 2420/4152).  
26 Defendants responded that the CDCR’s Fall 2011 population projections were not reliable  
27 and that the forthcoming Spring 2012 population projections would be more accurate. Defs.’  
28 Opp’n to Pls.’ Mot. for Increased Reporting in Excess of the Court’s June 30, 2011 Order at

1 2-4 (ECF No. 2423/4162). This Court accepted defendants' argument and denied plaintiffs' motion without prejudice. Mar. 22, 2012 Order Denying Pls.' Feb. 7, 2012 Mot. (ECF No. 2428/4162). Two months later, plaintiffs renewed their motion, correctly observing that the Spring 2012 population projections were not significantly different from the Fall's. Pls.' Renewed Mot. for an Order Requiring Defs. to Demonstrate How They Will Achieve the Required Population Reduction by June 2013 (ECF No. 2435/4180). Plaintiffs also informed this Court of a new public report, "The Future of California Corrections" ("The Blueprint"), in which defendants stated that they would not meet the 137.5% June 2013 benchmark and would seek modification of this Court's Population Reduction Order. *See CDCR, The Future of California Corrections: A Blueprint to Save Billions of Dollars, End Federal Oversight, and Improve the Prison System*, Apr. 2012, available at <http://www.cdcr.ca.gov/2012plan/docs/plan/complete.pdf>. Plaintiffs asked that defendants be held in contempt. Defendants responded, informing us that they intended to seek modification of our Population Reduction Order to increase the final benchmark from 137.5% to 145% design capacity. Defs.' Opp'n to Pls.' Renewed Mot. for an Order Requiring Defs. to Demonstrate How They Will Achieve the Required Population Reduction by June 2013 at 2 (ECF No. 2442/4192).

18 This Court ordered two rounds of supplemental briefing regarding defendants' anticipated motion to modify the Population Reduction Order. June 7, 2012 Order Requiring Further Briefing (ECF No. 2445/4193); Aug. 3, 2012 2d Order Requiring Further Briefing (ECF No. 2460/4220). In response, defendants retreated, stating that they believed it would be premature to begin modification proceedings before the prison population reached 145% design capacity, which they predicted would happen in February or March of 2013. Defs.' Resp. to Aug. 3, 2012 2d Order Requiring Further Briefing at 9-10 (ECF No. 2463/4226). In September 2012, we again denied without prejudice plaintiffs' request that defendants be held in contempt. We also asked defendants to answer questions they had failed to respond to in their supplemental briefing, namely how long it would take them to develop a system for identifying low-risk offenders for early release ("Low-Risk List," a list recommended by

1 the Supreme Court in *Plata*, 131 S. Ct. at 1947), and whether they could comply with our  
2 Population Reduction Order by June 2013, and if not, when the earliest time they could  
3 comply by would be. Sept. 7, 2012 Order Granting in Part & Denying in Part Pls.' May 9  
4 and Aug. 22, 2012 Mots. (ECF No. 2473/4235). Defendants responded that they needed six  
5 months to develop the Low-Risk List and that they could comply with our Population  
6 Reduction Order with a six-month extension, largely by maintaining the out-of-state  
7 program. Defs.' Resp. to Sept. 7, 2012 Order at 5-6 (ECF No. 2479/4243). Believing that  
8 resolution was close, this Court ordered both parties to meet and develop plans to reduce the  
9 prison population to 137.5% design capacity by (a) June 27, 2013, and (b) December 27,  
10 2013. Oct. 11, 2012 Order to Develop Plans to Achieve Required Prison Population  
11 Reduction at 1 (ECF No. 2485/4251).

12 On January 7, 2013, both parties filed plans to meet the 137.5% design capacity  
13 benchmark. Defendants stated that they could comply by December 2013 without the release  
14 of prisoners. Defs.' Resp. to Oct. 11, 2012 Order (ECF No. 2511/4284). But, despite this  
15 promising report, not long after this filing defendants refused to take further action to comply  
16 with our Population Reduction Order. First, in their January, February, and March status  
17 reports, defendants stated that they would take no further action to comply with the Order.  
18 See Defs.' Jan. 2013 Status Report at 1 (ECF No. 2518/4292); Defs.' Feb. 2013 Status  
19 Report at 1 (ECF No. 2538/4342); Defs.' March 2013 Status Report at 1 (ECF No.  
20 2569/4402). Second, the Governor terminated his emergency powers, declaring that the  
21 crisis in the prisons was resolved. Gov. Edmund G. Brown Jr., *A Proclamation by the*  
22 *Governor of the State of California*, Jan. 8, 2013, available at  
23 <http://gov.ca.gov/news.php?id=17885>. As a result, defendants were no longer able to  
24 contract to house approximately 9,500 prisoners in out-of-state prisons, forcing a scheduled  
25 partial return of these prisoners during 2013, and a consequent increase in the prison  
26 population. Third, defendants filed a motion in the *Coleman* court to terminate all injunctive  
27 relief in that case. Mot. to Terminate & to Vacate J. & Orders (*Coleman* ECF No. 4275).  
28 Fourth, defendants filed a motion to vacate or modify our Population Reduction Order.

1   Def.'s Mot. to Vacate or Modify Population Reduction Order (ECF No. 2506/4280) ("Three-  
 2   Judge Motion"). This motion did not await the prison population's reaching a design  
 3   capacity of 145%, as defendants had said they would, *see supra* p. 6. In fact, the prison  
 4   population has still not reached that figure.

5           This Court stayed consideration of defendants' Three-Judge Motion on January 29,  
 6   2013. At the same time, we granted defendants a six-month extension to comply with our  
 7   Population Reduction Order, extending the final 137.5% design capacity benchmark to  
 8   December 31, 2013. Jan. 29, 2013 Order at 2-3 (ECF No. 2572/4317). On April 11, 2013,  
 9   this Court denied defendants' Three-Judge Motion, as modified,<sup>2</sup> and ordered that they take  
 10   all steps to comply with the Population Reduction Order. Apr. 11, 2013 Op. & Order at 2  
 11   (ECF No. 2590/4541). We gave three reasons for denying defendants' Three-Judge Motion.  
 12   First, it was barred by res judicata as an improper attempt to relitigate the 137.5% figure that  
 13   we had determined in 2009 and that the Supreme Court had explicitly affirmed. *Id.* at 36-37.  
 14   Second, defendants did not meet their burden under Federal Rule of Civil Procedure 60(b)(5)  
 15   to prove a "significant and unanticipated change in factual conditions warranting  
 16   modification." *Id.* at 40 (citing *United States v. Asarco Inc.*, 430 F.3d 972, 979 (9th Cir.  
 17   2005) (summarizing *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384-86 (1999))).  
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19           <sup>2</sup> Contrary to defendants' representation in their motion to stay this Court's June 20,  
 20   2013 Order, defendants' Three-Judge Motion was not based on "evidence showing that  
 21   underlying Eighth Amendment deficiencies in medical and mental health care had been  
 22   remedied." Def.'s Mot. to Stay at 3 (ECF No. 2665/4673). Although defendants initially  
 23   asked this Court to decide this constitutional question, they later modified their motion by  
 24   withdrawing this request. Def.'s. Resp. to Jan 29, 2013 Order at 4 (ECF No. 2529/4332)  
 25   ("The issue to be decided by this Court is not constitutional compliance."); Def.'s. Reply Br.  
 26   in Supp. of Three-Judge Mot. at 11 (ECF No. 2543/4345) ("Defendants' motion did not seek  
 27   a determination of constitutionality."). With this request withdrawn, the only argument that  
 28   defendants made for vacatur was that crowding was no longer the primary cause for any  
 underlying constitutional violations. *Id.*

Defendants made a similar misrepresentation in their notice of appeal to the Supreme Court of our April 11, 2013 Order. In that notice, they stated that they would appeal in part because we "did not fully or fairly consider the evidence showing that the State's prisoner health care now exceeds constitutional standards." Def.'s Notice of Appeal to the Supreme Court at 3 (ECF No. 2621/4605). We did not consider this evidence because, as stated above, defendants explicitly modified their motion so as to withdraw any constitutional questions from this Court's consideration.

1 Third, defendants failed to demonstrate a “durable” solution that would justify this Court’s  
2 vacating a prior order. *Id.* at 54-55.

3 To ensure compliance with our Population Reduction Order, this Court asked  
4 defendants to submit a list of all population reduction measures discussed as possible  
5 remedies during the course of the Three-Judge Court proceedings (“List”) and, from that  
6 List, suggest a plan for compliance with the Population Reduction Order (“Plan”), without  
7 regard to whether defendants had the authority to implement the measures designated. We  
8 further ordered defendants to use their best efforts to implement the Plan, and to inform us of  
9 their progress in their monthly reports. Finally, we ordered defendants to develop a “Low-  
10 Risk List” that they might use, if necessary, to comply with the Population Reduction Order  
11 by releasing low-risk offenders. Apr. 11, 2013 Order (ECF No. 2491/4542).

12 On May 2, 2013, defendants submitted their List and Plan. Defs.’ Resp. to April 11,  
13 2013 Order (ECF No. 2609/4572). Defendants’ response did not comply with our April 11  
14 Order, as they did not provide a Plan that would reach the 137.5% population benchmark by  
15 December 31, 2013. Defendants conceded as much, *id.* at 5 n.3, 37 (acknowledging that  
16 their latest Plan will not achieve the 137.5% figure by December 31, 2013), although they  
17 underestimated the scope of their noncompliance. They estimated that their Plan would  
18 result in a prison population of 140.7% design capacity by December 31, 2013; in fact, their  
19 Plan might at best achieve a prison population of 142.6% design capacity by December 31,  
20 2013 – 4,170 prisoners short of the 137.5% benchmark. *See* June 20, 2013 Op. & Order at  
21 28-31(ECF No. 2659/4662) (explaining this discrepancy). Thus, well into the third decade of  
22 litigation, it was clear that defendants remained unwilling to implement a plan that would  
23 comply with the Population Reduction Order and the Supreme Court’s 2011 decision.

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1 **II. JUNE 20, 2013 OPINION & ORDER**

2 On June 20, 2013, in response to defendants' proposed Plan that would not in any  
3 event achieve compliance, and facing a "long and unhappy history of litigation," this Court  
4 entered a "comprehensive order to insure against the risk of inadequate compliance."  
5 June 20, 2013 Op. & Order at 36 (ECF No. 2659/4662) (quoting *Hutto v. Finney*, 437 U.S.  
6 678, 687 (1978)). We ordered defendants to implement an "Amended Plan" consisting of the  
7 measures in their proposed Plan plus an additional measure consisting of the expansion of  
8 good time credits, prospective and retroactive, to all prisoners, as set forth in defendants'  
9 List, but not in their Plan. This additional measure would provide the 4,170 prisoners needed  
10 to bring defendants' Plan into compliance, assuming that the compliance would be durable.  
11 We carefully explained our reason for choosing this particular measure. First, extensive  
12 testimony at the 2009 trial revealed that good time credits were the most promising measure  
13 for reducing overcrowding. *Id.* at 38. The measure would in many cases reduce the prison  
14 population by allowing prisoners to shorten their lengths of stay in prison by as little as a few  
15 months. At trial, plaintiffs' experts – Doctors Austin and Krisberg, and Secretaries  
16 Woodford, Lehman, and Beard – were unanimous in their agreement that "such moderate  
17 reductions in prison sentences do not adversely affect either recidivism rates or the  
18 deterrence value of imprisonment." Aug. 4, 2009 Op. & Order at 140 (ECF No. 2197/3641).  
19 Defendants' one expert in opposition, Dr. Marquart, did not in fact oppose good time credits.  
20 *Id.* at 139-40. His only criticism – that good time credits expansion might reduce the  
21 opportunity for prisoners to complete rehabilitative programming – was, in our final  
22 determination, "a note about the factors that should be considered in designing an effective  
23 expanded good time credits system. It is entitled to little, if any, weight as an observation  
24 about the possible negative effect on public safety of such a system." *Id.* at 141. Based on  
25 this and other testimony, we concluded following trial that early release through good time  
26 credits does not increase the crime rate but rather "affects only the timing and circumstances  
27 of the crime, if any, committed by a released inmate." *Id.* at 143. We further "credit[ed] the  
28 opinions of the numerous correctional experts that the expansion of good time credits would

1 not adversely affect but rather would benefit the public safety and the operation of the  
2 criminal justice system.” *Id.* at 145.

3       Second, we rejected defendants’ arguments against expanding the good time credits  
4 measure by applying it retroactively and to all offenders. June 20, 2013 Op. & Order at 39-  
5 40 (ECF No. 2659/4662). Defendants first argued that, although prospective application of  
6 good time credits for prisoners convicted of non-violent offenses is safe, retroactive  
7 application of these credits to these same prisoners is not safe. Defendants provided no  
8 support for this proposition. Moreover, both the *Plata* Receiver and the State’s own CDCR  
9 Expert Panel had recommended making the good time credits changes retroactive. *See*  
10 Receiver’s 23rd Report at 33 (ECF No. 2636/4628); CDCR Expert Panel, *A Roadmap for*  
11 *Effective Offender Programming in California: A Report to the California Legislature*, June  
12 2007, at 95.<sup>3</sup> Defendants further argued that good time credits should not be afforded to  
13 prisoners convicted of violent offenses. Yet not a single expert at trial distinguished between  
14 inmates convicted of violent and non-violent crimes for the purposes of good time credits,  
15 and the CDCR Expert Panel specifically recommended expanding good time credits for all  
16 prisoners, “including all sentenced felons regardless of their offense or strike levels.” *Id.* at  
17 92. Based on these observations, we concluded that defendants’ arguments against  
18 expanding the good time credit measure were without merit.

19       Third, we noted the success other jurisdictions experienced in safely expanding their  
20 good time credits programs. June 20, 2013 Op. & Order at 9-10, 41 & n.26 (ECF No.  
21 2659/4662). California has instituted good time credit programs in 21 counties between  
22 1996 and 2006, resulting in approximately 1.7 million inmates having been released by court  
23 order without an increase in the crime rate. *Id.* at 9 (citing testimony by Dr. Krisberg,  
24 Aug. 4, 2009 Op. & Order at 144 (ECF No. 2197/3641)). Washington expanded its good  
25 time credits program and Secretary Lehman, the former head of corrections for Washington,

26       <sup>3</sup> The members of the CDCR Expert Panel included various leading experts in crime  
27 and incarceration, such as Doctors Petersilia, Krisberg, and Austin; current CDCR Secretary  
28 Jeffrey Beard; and many other senior officials of correctional programs throughout the  
country.

1 testified at trial that “these measures did not have any ‘deleterious effect on crime’ or public  
2 safety.” *Id.* (citing Aug. 4, 2009 Op. & Order at 147 (ECF No. 2197/3641)). Illinois,  
3 Nevada, Maryland, Indiana, and New York all successfully implemented good time credits  
4 expansion without adversely affecting public safety. *Id.* In New York, the prison population  
5 decreased due in part to the expansion of programs awarding good time credits, and the  
6 crime rate *declined* substantially. *Id.*

7 Finally, we pointed out that the Supreme Court had expressly endorsed the good time  
8 credits measure: “Expansion of good-time credits would allow the State to give early release  
9 to only those prisoners who pose the least risk of reoffending.” *Plata*, 131 S. Ct. at 1943.  
10 The Supreme Court also approvingly discussed the empirical and statistical evidence from  
11 other jurisdictions that had successfully implemented good time credits. *Id.* at 1942-43  
12 (listing the experience in certain California counties, Washington, etc.). In endorsing the  
13 good time credits measure, the Supreme Court stated that this Court’s factual findings on  
14 public safety were to be credited over the contrary views of defendants. *Id.* at 1942. The  
15 Supreme Court was in clear agreement with this Court that defendants could reduce the  
16 prison population to 137.5% design capacity without adversely affecting public safety,  
17 specifically through the expansion of good time credits. For these reasons, we ordered  
18 defendants to implement an “Amended Plan” consisting of their Plan and the expanded good  
19 time credits measure.

20 Although this Court ordered defendants to implement the Amended Plan, including  
21 good time credits, we emphasized that we desired to “continue to afford a reasonable  
22 measure of flexibility to defendants, notwithstanding their failure to cooperate with this  
23 Court or to comply with our orders during the course of these proceedings.” June 20, 2013  
24 Op. & Order at 51 (ECF No. 2659/4662). To this end, this Court offered defendants three  
25 methods of making substitutions to the measures in the Amended Plan. First, defendants  
26 may, if they prefer, revise the good time credit measure currently proposed such that it does  
27 not result in the release of violent offenders, so long as the revision results in the release of at  
28

1 least the same number of prisoners as would the current good time credit measure.<sup>4</sup> This  
2 may be accomplished in part by adjusting the credits to levels awarded by other states or  
3 counties. Second, defendants may substitute for any group of prisoners who are eligible for  
4 release under the Amended Plan a different group of prisoners consisting of no less than the  
5 same number of prisoners selected pursuant to the Low-Risk List, with the substitution being  
6 in the order in which the prisoners are listed, individually or by category on that list. Third,  
7 defendants may substitute any group of prisoners from the List of all population reduction  
8 measures identified in this litigation, submitted by defendants on May 2, 2013, for any  
9 groups contained in a measure listed in the Amended Plan, should defendants conclude by  
10 objective standards that they are no greater risk than the prisoners for whom they are to be  
11 substituted. *Id.* We provided examples of such substitutions: “Lifers,” who, due to age or  
12 infirmity, are adjudged to be “low risk” by CDCR’s risk instrument; prisoners who have nine  
13 months or less to serve of their sentence who could serve the duration of their sentences in  
14 county jails rather than in state prisons; or prisoners who could be reassigned from state  
15 prisons to leased jail space. *Id.* at 51-52.<sup>5</sup> By “Lifers,” we refer to the category of prisoners  
16 who are serving sentences of a fixed number of years to life and are eligible for parole. As of  
17 2011, there were 32,000 Lifers in California state prisons. Lifers made up 20% of the  
18 California prison population, an increase from 8% in 1990. A 2011 study by the Stanford  
19 Criminal Justice Center reported that “the incidence of commission of serious crimes by the  
20 recently released lifers has been minuscule.” Robert Weisberg, Debbie A. Mukamal &

21       <sup>4</sup> These modifications to the proposed good time credit program would not affect the  
22 inclusion of retroactivity. They would only affect aspects such as the amount of good time  
23 credit to be received by various categories of offenders, all non-violent, and the amount of  
24 credit to be received for the various activities for which good time credit is rewarded. For  
25 example, defendants could extend 2-for-1 credit earning to prisoners other than those held in  
26 fire camps and minimum custody facilities (their current proposal), increase the credit  
earning limit for milestone completion credits, or increase the credit earning capacity of non-  
violent offenders above 34 percent. Other states have taken similar measures to expand their  
good time credit programs for non-violent offenders without a subsequent increase in  
recidivism. June 20, 2013 Op. & Order at 40 & n.26 (ECF No. 2659/4662).

27       <sup>5</sup> The prisoners now housed out of state who were due to be returned this year are  
28 already accounted for in the Plan. No other prisoners housed out of state will be considered  
as part of any substitute measure.

1 Jordan D. Segall, *Life in Limbo: An Examination of Parole Release for Prisoners Serving*  
2 *Life Sentences with the Possibility of Parole in California* at 3-4 (Stanford Criminal Justice  
3 Center, Sept. 2011).

4 Our June 20, 2013 Order was not the first time we have given defendants a broad  
5 choice in determining how to comply with our Population Reduction Order. Over the past  
6 four years, this Court has done everything possible to ensure that defendants have flexibility  
7 in adopting measures that will attain compliance. We have never ordered defendants to  
8 select any particular measures; rather, we have consistently offered defendants the choice as  
9 to how they will reach the 137.5% design capacity benchmark. Our Population Reduction  
10 Order merely asked for a plan for compliance. Aug. 4, 2009 Op. & Order at 183 (ECF No.  
11 2197/3641). Our January 2010 Order accepted defendants' two-year timeline for compliance  
12 without ordering them to implement any specific measures. Jan. 12, 2010 Order to Reduce  
13 Prison Population at 4 (ECF No. 2287/3767). Our April 11, 2013 Order deferred to  
14 defendants for a Plan for reaching the 137.5% design capacity benchmark that *they* found  
15 most acceptable. Finally, and as described in detail above, although our most recent order,  
16 issued on June 20, 2013, makes suggestions as to how defendants could reduce the prison  
17 population to 137.5% by December 31, 2013, it leaves defendants significant flexibility in  
18 deciding how to reach this cap. *See* June 20, 2013 Op. & Order at 33 (ECF No. 2659/4662)  
19 ("We are willing to defer to [defendants'] choice for *how* to comply with our Order, not  
20 *whether* to comply with it.").

21 Further, this Court has twice extended deadlines for compliance for defendants, even  
22 without their formally requesting that we do so. In January 2010, when this Court ordered  
23 defendants to reduce the prison population to certain benchmarks every six months, we sua  
24 sponte stayed this order pending appeal to the Supreme Court. Jan. 12, 2010 Order to  
25 Reduce Prison Population at 6 (ECF No. 2287/3767). Because the Supreme Court's decision  
26 was not issued until June 2011, defendants gained an additional two years with which to  
27 comply with this Court's Population Reduction Order – an additional two years that the  
28 Supreme Court recognized in endorsing our two-year timeline. *Plata*, 131 S. Ct. at 1946

1 (noting that “defendants will have already had over two years to begin complying with the  
2 order of the three-judge court”). Then, on January 29, 2013, again without any formal  
3 request by defendants, this Court once more extended the deadline, giving defendants six  
4 additional months to comply with our Population Reduction Order. Jan. 29, 2013 Order at  
5 2-3 (ECF No. 2527/4317). As a result, defendants will have had well over four years to  
6 comply with our Population Reduction Order – more than twice the amount of time  
7 contemplated in that Order.

8       Despite our repeated efforts to assist defendants to comply with our Population  
9 Reduction Order, they have consistently engaged in conduct designed to frustrate those  
10 efforts. They have continually sought to delay implementation of the Order. At the time of  
11 the Population Reduction Order, defendants asked this Court to wait for “chimerical”  
12 possibilities. *Plata*, 131 S. Ct. at 1938. As the Order was appealed to the Supreme Court,  
13 defendants insisted that this Court had been convened prematurely and that alternative  
14 remedies to a prisoner release order existed. The Supreme Court rejected these arguments,  
15 ordering defendants to “implement the order without further delay.” *Id.* at 1947. Defendants  
16 have done no such thing. They have refused to follow the Supreme Court’s order. They took  
17 one action, Realignment, and when it became apparent that this action would be insufficient  
18 to comply with the Population Reduction Order, defendants refused to take any further steps  
19 to reduce the prison population to 137.5% design capacity. Instead, they moved to terminate  
20 all prospective relief granted by the *Coleman* court under the PLRA’s termination provision,  
21 moved to vacate the Population Reduction Order issued by this Court under Federal Rule of  
22 Civil Procedure 60(b)(5), voluntarily terminated their own emergency powers to house  
23 prisoners out of state, and reported in their monthly status reports that they would no longer  
24 take actions to comply with the Population Reduction Order. Governor Brown declared,  
25 notwithstanding the orders of this Court, that the crisis in the prisons was resolved. *See* Gov.  
26 Edmund G. Brown Jr., *A Proclamation by the Governor of the State of California*, Jan. 8,  
27 2013, <http://gov.ca.gov/news.php?id=17885>. Finally, when asked to submit a Plan for  
28

1 compliance, defendants submitted, instead, a Plan for noncompliance – a Plan that fell far  
2 short of the required figures.

3 In defense of their actions, defendants equivocate regarding the facts and the law. For  
4 example, defendants have repeatedly asserted that they have reduced the prison population  
5 by “more than 42,000 inmates since 2006.” Defs.’ Resp. to Pls.’ Resp. & Req. for Order to  
6 Show Cause Regarding Defs.’ Resp. to Apr. 11, 2013 Order at 3 (ECF No. 2640/4365); *see*  
7 *also* Defs.’ Resp. to Apr. 11, 2013 Order at 39 (ECF No. 2609/4572) (same). This statistic is  
8 misleading, as it includes reductions made between 2006 and 2009, before we issued our  
9 Population Reduction Order. Similarly, in defense of their May 2013 Plan for  
10 noncompliance, defendants stated that they have “taken all actions in [their] power” to reach  
11 the December 2013 population cap, arguing that they are either without authority to take  
12 further measures or that such measures would threaten public safety. Defs.’ Resp. to Pls.’  
13 Resp. & Req. for Order to Show Cause Regarding Defs.’ Resp. to Apr. 11, 2013 Order at 1  
14 (ECF No. 2640/4365). In making this statement, defendants failed to recognize that they  
15 could have met the 137.5% cap by increasing capacity, a measure that would have reduced  
16 overcrowding without releasing any prisoners; asked the legislature to modify the restrictions  
17 to which they adverted in submitting an insufficient Plan; requested changes to sentencing  
18 policies that would have reduced the prison population substantially; or retained, instead of  
19 surrendering, emergency authority regarding housing prisoners out of state. Given  
20 defendants’ history of noncompliance, it comes as no surprise that they have requested a last-  
21 minute stay of our June 20, 2013 Order, rather than making any effort to comply with the  
22 2011 mandate of the Supreme Court. Of crucial importance, however, defendants now state  
23 that absent a stay by this Court and the Supreme Court, they will comply with the Population  
24 Reduction Order. Defs.’ Mot. to Stay at 2 (ECF No. 2665/4673). Such compliance, if  
25 durable, will bring the California prison population into conformity with the Eighth  
26 Amendment.

27 As to the timeliness of defendants’ request for a stay, as plaintiffs point out in their  
28 thorough and thoroughly reasoned response, *see* Pls.’ Am. Resp. to Defs.’ Mot. to Stay (ECF

1 No. 2669/4677), defendants' sense of urgency appears to be as newly developed as their  
2 sense of urgency regarding the appeal of the Population Reduction Order, which is now over  
3 four years old. This Court's April 11, 2013 Order, the order immediately prior to the one at  
4 issue here, and one of a number of orders directing defendants to comply with the Population  
5 Reduction Order, was appealed by defendants to the Supreme Court on May 13, 2013, yet no  
6 stay was requested following that appeal. Defs.' Notice of Appeal to the Supreme Court at 3  
7 (ECF No. 2621/4605). Moreover, despite the familiarity defendants' counsel undoubtedly  
8 have with this case after at least four years of uninterrupted litigation, they felt compelled to  
9 obtain a 45-day extension of time in which to file a jurisdictional statement before the  
10 Supreme Court, thus belying the need for urgency in resolving the appeal. *See Brown v.*  
11 *Plata*, Sup. Ct. Docket No. 13A5, available at <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/13a5.htm> (noting that, on July 1, 2013, Justice Kennedy granted  
12 defendants' June 25, 2013 application to extend the time to file a jurisdictional statement on  
13 appeal from July 12, 2013, to August 26, 2013).  
14

15

### 16 III. DISCUSSION

17 In considering an application for a stay, this Court considers: (1) whether the stay  
18 applicant has made a strong showing that he is likely to succeed on the merits; (2) whether  
19 the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will  
20 substantially injure the other parties interested in the proceeding; and (4) where the public  
21 interest lies. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *Humane Soc. of U.S. v. Gutierrez*,  
22 558 F.3d 896, 896 (9th Cir. 2009). Applying these factors to this case, this Court has no  
23 difficulty in denying defendants' request for a stay.

24 First, defendants have not made a strong showing that they are likely to succeed on  
25 the merits. Defendants appear to make two arguments regarding this factor in their  
26 application for a stay: (1) there are no longer any underlying constitutional violations; and  
27 (2) even if constitutional violations remain, additional population reductions are not  
28 necessary to remedy these violations. Defs.' Mot. to Stay at 8-9 (ECF No. 2665/4673). The

1 first argument is not raised before this Three-Judge Court. As explained *supra* p.8 & n.2,  
2 although defendants initially posed this question in their January 7, 2013 Three-Judge  
3 Motion to Vacate the Population Reduction Order, they later modified the motion by  
4 removing any constitutional question from the purview of this Court. Defendants have also  
5 never made this argument before the *Plata* court. That is, they have not asked the *Plata* court  
6 or this Court to determine that defendants are no longer failing to provide constitutionally  
7 adequate medical health care to its prison population or to vacate injunctive relief on that  
8 ground. They have, in fact, made this argument only once. They did so before the *Coleman*  
9 court, on January 7, 2013. They asked that court to terminate all injunctive relief in *Coleman*  
10 on the ground that California's mental health care system for prisoners no longer violates the  
11 Eighth Amendment. *See* Mot. to Terminate & Vacate J. & Orders at 28 (*Coleman* ECF No.  
12 4275). The *Coleman* court denied defendants' motion to terminate on the ground that  
13 "ongoing constitutional violations remain" "in the delivery of adequate mental health care."  
14 Apr. 5, 2013 Order Denying Defs.' Mot. to Terminate at 67 (*Coleman* ECF No. 4539).  
15 Moreover, we have made clear that our Population Reduction Order relied on each of the two  
16 cases individually and collectively, and that if the constitutional violations exist in either  
17 case, they exist for the purposes of this Three-Judge Court.<sup>6</sup> Thus, even if plaintiffs were to  
18 file a motion to dismiss in the *Plata* case on the ground that the medical health care system in  
19 California prisons no longer violates the Eighth Amendment, and even if they were to

21         <sup>6</sup> See Aug. 4, 2009 Op. & Order at 58-60 (ECF No. 2197/3641) (discussing how  
22 crowding causes “general problems in the delivery of medical and mental health care”); *id.* at  
23 61-63 (discussing how overcrowded reception centers result in insufficient medical care); *id.*  
24 at 63-65 (discussing the especially grave consequences of overcrowded reception centers for  
25 individuals with mental illness); *id.* at 65-68 (discussing the effect of insufficient treatment  
26 space and the inability to properly classify inmates on both medical and mental health care);  
27 *id.* at 68-70 (discussing lack of space for mental health beds); *id.* at 70-72 (discussing how  
28 conditions of confinement result in the spread of diseases); *id.* at 72-73 (discussing how  
conditions of confinement exacerbate mental illness); *id.* at 74-76 (discussing shortages in  
medical health care staff); *id.* at 76-77 (discussing shortages in mental health care staff); *id.*  
at 79-80 (discussing medication management issues in both *Plata* and *Coleman*); *id.* at 82  
(discussing the effect of lockdowns on the provision of medical health care); *id.* at 83  
(discussing the effect of lockdowns on the provision of mental health care); *id.* at 83-85  
(discussing the need for medical records in medical and mental health care); *id.* at 85-86  
(discussing the increasing acuity of mental illness); *id.* at 87-88 (discussing suicides); *id.* at  
87-88 (discussing preventable deaths).

1 succeed on that motion, which appears to be highly unlikely, our Population Reduction Order  
 2 would still be necessary to remedy the constitutional violations that remain in *Coleman*.<sup>7</sup>

3 Defendants' second argument, that even if constitutional violations remain, additional  
 4 population reductions are not necessary to remedy these violations, has been raised properly,  
 5 *see* Three-Judge Mot. (ECF No. 2506/4280), but is without merit. In 2011, the Supreme  
 6 Court affirmed in full this Court's finding that the only way to remedy the ongoing  
 7 constitutional violations in California prisons is to reduce the prison population to 137.5% of  
 8 design capacity. *Plata*, 131 S. Ct. at 1945 ("There are also no scientific tools available to  
 9 determine the precise population reduction necessary to remedy a constitutional violation of  
 10 this sort. The three-judge court made the most precise determination it could in light of the  
 11 record before it."). In fact, describing the evidence before the Three-Judge Court, the  
 12 Supreme Court said that the evidence supported "an even more drastic remedy," i.e., a  
 13 population cap lower than 137.5% design capacity. *Id.* at 1945. Defendants have not met the  
 14 137.5% design capacity benchmark. The current California prison population is at 149.2%  
 15 design capacity. CDCR, *Weekly Rpt. of Population*, July 1, 2013, *available at*  
 16 [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Weekly](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Weekly)  
 17 *Wed/TPOP1A/TPOP1Ad130626.pdf*.

18 When defendants first made this argument before this Court in January 2013, we  
 19 rejected it on the ground that they had not provided evidence of any significant and  
 20 unanticipated change in circumstances to rebut the Supreme Court's determination that only  
 21 a population reduction to 137.5% design capacity would remedy the underlying  
 22 constitutional violations. Apr. 11, 2013 Op. & Order Denying Defs.' Mot. to Vacate or  
 23 Modify Population Reduction Order at 55-56 (ECF No. 2590/4541). Defendants provide no

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24  
 25 <sup>7</sup> One three-judge court was convened, instead of two, for practical reasons only. The  
 26 individual district courts recommended consolidation "[f]or purposes of judicial economy  
 27 and avoiding the risk of inconsistent judgments." July 23, 2007 Order in *Plata*, 2007 WL  
 2122657, at \*6; July 23, 2007 Order in *Coleman*, 2007 WL 2122636, at \*8. The Supreme  
 28 Court agreed, stating that there was a "certain utility in avoiding conflicting decrees and  
 aiding judicial consideration and enforcement." *Plata*, 131 S. Ct. at 1922. It was a "limited  
 consolidation" only and, most important, "[t]he order of the three-judge District Court is  
 applicable to both cases." *Id.*

1 further support for such a contention, and therefore are unlikely to succeed on the merits.  
2 Defs.’ Mot. to Stay at 9 (ECF No. 2665/4673) (stating only that “additional population  
3 reductions are unnecessary to prevent death or needless suffering or to ensure that the quality  
4 of medical and mental health care does not pose a substantial risk of serious harm to the two  
5 certified classes of inmates”).

6 Second, defendants will not be irreparably injured absent a stay. The Amended Plan  
7 that we have ordered defendants to implement consists largely of measures in their proposed  
8 Plan. *See* Defs.’ Resp. to Apr. 11, 2013 Order at 28-33 (ECF No. 2609/4572). Further, we  
9 have already determined that the one additional measure we have suggested they implement,  
10 the full expansion of good time credits, will not cause irreparable injury. As explained in  
11 detail *supra* pp. 10-12, this Court carefully considered the question of whether the expansion  
12 of good time credits was consistent with public safety in our August 2009 Opinion & Order.  
13 We heard extensive testimony from the leading experts in the country, all of whom –  
14 including the now Secretary of CDCR Dr. Beard – testified that the expansion of good time  
15 credits could be implemented safely. The Supreme Court affirmed this conclusion, crediting  
16 our factual findings, *Plata*, 131 S. Ct. at 1942, and endorsing our determination that  
17 expansion of good time credits would reduce overcrowding “with little or no impact on  
18 public safety” by allowing the State “to give early release to only those prisoners who pose  
19 the least risk of reoffending,” *id.* at 1943.

20 Defendants’ “new evidence” in their request for a stay is not to the contrary.  
21 Defendants cite an article by two Stanford Law School professors for the proposition that  
22 “even inmates that CDCR has considered ‘low risk’ recidivate such that 41% are returned to  
23 California prisons within three years, and that 11% of such ‘low risk’ offenders have been  
24 ‘rearrested for a violent felony within 3 years of release.’” Defs.’ Mot. to Stay at 6-7 (ECF  
25 No. 2665/4673) (citing Joan Petersilia & Jessica Greenlick Snyder, *Looking Past the Hype:*  
26 *10 Questions Everyone Should Ask About California’s Prison Realignment*, 5(2) Cal. J.  
27 Politics Policy 266, 295 (2013)). This sole law journal article, not subject to cross-  
28 examination, of course, is not sufficient to rebut the extensive testimony this Court

1 considered after fourteen days of trial in 2009. This aside, the professors' statistics, even if  
2 correct, are irrelevant to the question of whether releasing prisoners *early* will have a  
3 different effect on their behavior than releasing them *later*. The statistics that defendants cite  
4 indicate the percentage of prisoners who are likely to recidivate, but they do not suggest that  
5 there is a difference in the percentage of low-risk prisoners who recidivate when they are  
6 released early compared to when they are released at the time originally scheduled. At trial,  
7 after considering extensive testimony on the question of whether early release through good  
8 time credits increases the crime rate, the evidence showed overwhelmingly that it does not,  
9 and that it "affects only the timing and circumstances of the crime, if any, committed by a  
10 released inmate." Aug. 4, 2009 Op. & Order at 143 (ECF No. 2197/3641). In fact, an  
11 argument can be made that the early release of prisoners may even *decrease* the crime rate.  
12 The State could well use the funds it saves by caring for fewer prisoners to fund reentry  
13 programs such as drug rehabilitation, job training, housing assistance, education, and other  
14 programs that reduce recidivism. The absence of such reentry assistance is far more likely to  
15 increase recidivism than release on a date earlier than initially scheduled.

16 Moreover, although this Court believes the expanded good time credits measure is the  
17 simplest and best way for defendants to comply with our Population Reduction Order, we  
18 have not *required* defendants to implement this measure. Rather, we have afforded them  
19 flexibility, allowing them to modify the good time credits measure by, for example,  
20 increasing the amount of such credits that can be awarded to particular sets of individuals and  
21 limiting the number of prisoners who will be eligible to receive them. We have also allowed  
22 defendants to substitute for measures on the Amended Plan (including the good time credits  
23 measure) other measures from their List, or to substitute prisoners from the Low-Risk List.  
24 For example, defendants might reassign prisoners to leased jail space – one of the measures  
25 included on their List. June 20, 2013 Op. & Order at 50 (ECF No. 2659/4662). We also  
26 suggested that defendants consider substituting, for prisoners who fall within the Amended  
27 Plan, "Lifers" who, due to age or infirmity, are adjudged to be "low risk" by CDCR's risk  
28 assessment and a number of whom may be physically and mentally unable to commit future

1 crimes. *Id.* Our only requirement is that the substituted measures result in defendants' 2 reaching the 137.5% design capacity benchmark by December 31, 2013.

3 Third, issuance of a stay of our June 20, 2013 Order will substantially injure plaintiffs. 4 The *Plata* and *Coleman* courts have both determined that mental and medical health care 5 conditions in the California state prisons violate plaintiffs' constitutional rights, and this 6 Court and the Supreme Court have held that the only way to remedy these constitutional 7 violations is to reduce prison overcrowding to 137.5% design capacity. Recent reports by the 8 Receiver in *Plata*, Clark Kelso, confirm this finding. Kelso recently reported that "we do not 9 have appropriate and adequate healthcare space at the current population levels. We need 10 population levels to reduce to 137.5% of design capacity as ordered by the Three Judge 11 Panel." Receiver's 23rd Report at 31 (ECF No. 2636/4628). Granting a stay would result in 12 continuing injury to plaintiffs by maintaining the prison population at the current level of 13 149.2%, far above the constitutional level determined by this Court and affirmed by the 14 Supreme Court in 2011 to be necessary to the safety and welfare of those in the custody of 15 the State.<sup>8</sup>

16 Fourth, the public interest lies in denying defendants' request for a stay. "[I]t is 17 always in the public interest to prevent the violation of a party's constitutional rights." 18 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks and 19 citation omitted). Here, the public interest lies in obviating the ongoing constitutional 20 violations in the mental and medical health care systems in California's prisons – violations 21 that this Court and the Supreme Court have determined will be eliminated only when 22 defendants reduce the prison population from its current state of 149.2% design capacity to 23 137.5% design capacity. Finally, the public interest lies in denying the stay because 24 defendants have informed this Court that, absent a stay, they will comply with the Population 25

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<sup>8</sup> In their motion for a stay, defendants state that "population reduction is just one of many existing remedies directed at the alleged Eighth Amendment violations at issue; the other remedies will remain in place irrespective of any stay here." Defs.' Mot. to Stay at 7 (ECF No. 2665/4673). This does not change our finding, affirmed by the Supreme Court, that the only way to completely alleviate the ongoing constitutional violations is to reduce the prison population to 137.5% design capacity.

1 Reduction Order. Defs.’ Mot. to Stay at 2 (ECF No. 2665/4673). Conformity with the  
 2 Order, if durable, will satisfy the requirements of the Eighth Amendment.<sup>9</sup>

3

4 **IV. CONCLUSION**

5       Granting defendants a stay of our June 20, 2013 Order would serve to resolve this  
 6 litigation in defendants’ favor. The stay, which would last through the Supreme Court’s  
 7 determination whether its previous 2011 decision was warranted, would last well past  
 8 December 31, 2013, the date by which defendants have been ordered to reduce the prison  
 9 population to 137.5% design capacity. Put differently, granting the stay would mean that at  
 10 the end of the period by which defendants have been ordered to comply, defendants will have  
 11 been excused from meeting the requirements of this Court’s Population Reduction Order.  
 12 Only denial of the stay by this Court and the Supreme Court will, defendants concede, cause  
 13 them to comply with the Population Reduction Order issued in August 2009 and approved by  
 14 the Supreme Court in June 2011. Specifically, only denial of the stay will cause defendants  
 15 to implement the Plan it has selected along with an additional measure, whether the  
 16 additional measure be the expansion of good time credits, a measure recommended by  
 17 numerous experts at trial, which other states have had success in safely implementing, and  
 18 which the Supreme Court endorsed in *Brown v. Plata*; use of the Low-Risk List; or any of a  
 19 number of other measures of defendants’ choice.

20       *Coleman* was initiated 23 years ago, and *Plata* 12 years ago. The district court in  
 21 *Coleman* has issued over 100 substantive orders in an attempt to bring defendants into  
 22 compliance with the Eighth Amendment of the Constitution. Apr. 5, 2013 Order Denying  
 23 Defs.’ Mot. to Terminate at 31 (*Coleman* ECF No. 4539). The district court in *Plata* has

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25       <sup>9</sup> It is not enough simply to meet a specific target number of prisoners on a specific  
 26 date. Durability is necessary to ensure compliance with both the Order and the Constitution,  
 27 and can be determined only after a period of time in which this Court can examine whether  
 28 the ratio of prisoners to design capacity is stable. Changes in penological policies and  
 procedures, as well as other matters, may have a significant effect on the prisoner to design  
 capacity ratio. We maintain jurisdiction over the question for a reasonable period of time in  
 order to resolve that issue.

1 issued over 50 such orders, *see* Docket Sheet, *Plata v. Brown*, No. C01-1351 TEH (N.D.  
2 Cal.), and undoubtedly would have issued many more had a Receiver not been appointed in  
3 2006. After this long history of defendants' noncompliance, this Court cannot in good  
4 conscience grant a stay that would allow defendants to both not satisfy the Population  
5 Reduction Order and relitigate the Supreme Court's emphatic decision in the very case  
6 before us. A denial of the stay by this Court and the Supreme Court will, however, at least  
7 result in the State's obeying the orders of the federal judiciary and bringing the prison system  
8 into compliance with the Eighth Amendment, should the measures it selects prove durable.

9 For the above reasons, defendants' motion to stay this Court's June 20, 2013 Order is  
10 DENIED.

11

12 **IT IS SO ORDERED.**

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14 Dated: 07/03/13



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STEPHEN REINHARDT  
UNITED STATES CIRCUIT JUDGE  
NINTH CIRCUIT COURT OF APPEALS

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18 Dated: 07/03/13



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

21

22 Dated: 07/03/13



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

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