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10 **UNITED STATES DISTRICT COURT**
11 **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.

CASE NO. 2:90-cv-00520 KJM DAD P
THREE-JUDGE COURT

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

CASE NO. C01-1351 TEH
THREE-JUDGE COURT
**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR FURTHER
ENFORCEMENT ORDER**

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I. INTRODUCTION

As the most recent status and benchmark report shows, the State is 2,000 inmates below the 143% design bed capacity benchmark and has met the February 2015 benchmark as well. All of the court-ordered population reduction measures are well underway: Defendants are drafting regulations and updating their information-technology systems to accommodate the new parole process for non-violent second-strike offenders; they have already scheduled hearings and granted parole to medically incapacitated and elder parole inmates; eligible non-violent second-strike inmates are receiving enhanced credits; all thirteen reentry hubs are now activated; and a new facility for the expanded alternative custody program has been activated. Plaintiffs' attempt to micromanage the ongoing implementation of these measures is unnecessary and counterproductive.

II. ARGUMENT

A. Implementation of New Parole Procedures Is Well Underway.

Plaintiffs' contention that Defendants have not finalized or implemented parole processes for non-violent second strike offenders or persons eligible for elder parole is mistaken. (Pls.' Mot. to Enforce at 3:12-15.)

Since June 20, 2014, the Board of Parole Hearings (BPH) has granted parole to 63 inmates over age 60 and who have served at least 25 years. (Decl. J. Shaffer Supp. Defs.' Opp'n (Decl. Shaffer), ¶ 7.) On October 1, 2014, BPH will begin utilizing a revised risk assessment in all suitability hearings to determine how advanced age, long-term confinement, and diminished physical condition may impact the inmate's potential risk for future violence. (Decl. Shaffer, ¶ 7 & Defs.' Sept. 15, 2014 Status Update, Ex. B at ¶ 8, *Plata D.E.* 2811-2.) BPH is upgrading its information technology system to accommodate this parole measure and has already trained its commissioners. (Decl. Shaffer, ¶¶ 5 & 6.)

Defendants are also creating an entirely new parole process for non-violent second-strike offenders. Implementing this measure has required developing eligibility criteria, the process for reviewing cases, creating staff roles, and integrating this new measure into existing information technology systems. (Decl. R. Meier Supp. Defs.'

1 Opp'n (Decl. Meier), ¶ 2.) The May 2014 Revision to the Governor's Budget allocated
 2 additional funding to support these efforts. (*Id.* ¶ 4.) Defendants are developing an
 3 implementation process that includes, but is not dependent upon, the regulatory process.
 4 (*Id.* ¶ 3.)

5 Defendants are in full compliance with the Court's order. They immediately began
 6 work on creating and implementing this new parole measure and have made substantial
 7 progress. Requiring immediate implementation of the new parole process for non-violent
 8 second strike inmates, with truncated review process, would result in a haphazard policy
 9 that could endanger the public and not serve the goals of developing "comprehensive
 10 and sustainable prison population-reduction reforms." (*Plata* D.E. 2766 at 1.)

11 **B. Minimum Custody Inmates Cannot Earn Enhanced Credits Without**
 12 **Detrimentially Impacting The Fire Camp Population**

13 Plaintiffs baldly assert—without *any* supporting evidence—that granting 2-for-1
 14 credits to minimum custody inmates who are ineligible for fire camps "would have *no*
 15 impact on participation in fire camps." (Pls.' Mot. at 2:12-13, emphasis in original.)¹
 16 Plaintiffs' argument is based on a mistaken and simplistic understanding of how the
 17 correctional system operates.

18 Fire camp placement has become increasingly difficult as the number of potentially
 19 eligible inmates has been diminished by realignment. (Decl. Vimal Singh Supp. Defs.'
 20 Opp'n (Decl. Singh), ¶ 2; see *a/so* Decl. Wolff, Ex. B.) Strict criteria limiting fire camp
 21 eligibility to low-level, non-violent offenders are necessary because fire camp participants
 22 are housed in non-secure facilities and are in contact with members of the public in their
 23 role as firefighters. (Decl. Singh, ¶ 2.) To incentivize participation in this voluntary
 24 program, CDCR offers 2-for-1 credits. (*Id.* ¶ 4.) Notwithstanding this incentive, there is a

25 _____
 26 ¹ Plaintiffs made no meaningful effort to meet and confer prior to the filing. The parties
 27 exchanged one letter apiece on this issue, and Defendants' letter explained in detail why
 28 the expansion of credits was not feasible. (Decl. S. Wolff Supp. Defs.' Opp'n to Pls.' Mot.
 to Enforce (Decl. Wolff), ¶¶ 2, 3 & Exs. A, B.)

1 constant need for volunteers. (*Id.*)

2 Extending 2-for-1 credits to all minimum custody inmates at this time would
3 severely impact fire camp participation—a dangerous outcome while California is in the
4 middle of a difficult fire season and severe drought.

5 CDCR offers minimum custody inmates the opportunity to be placed in a minimum
6 support facility (MSF) where they perform a variety of critical job duties outside a prison's
7 secure perimeter, including assignments necessary for the continued operation of the
8 institution and essential to local communities.² (Decl. Singh, ¶ 5.) Like fire camps,
9 minimum support facilities draw from the same limited population of low-level, non-violent
10 offenders. (*Id.*) The extension of 2-for-1 credits to all MSF inmates would likely make fire
11 camp beds even more difficult to fill, as low-level, non-violent inmates would choose to
12 participate in the MSF program rather than endure strenuous physical activities and risk
13 injury in fire camps. (*Id.* ¶ 6.)

14 Even the extension of 2-for-1 credits solely to MSF inmates who are fire camp
15 ineligible would impact fire camps. Nearly two-thirds of the MSF population is fire camp
16 ineligible; the extension of enhanced credit-earning to these inmates would result in
17 higher turnover and an even greater demand for minimum custody inmates. (*Id.* ¶ 7.)
18 CDCR would be forced to draw down its fire camp population to fill these vital MSF
19 positions. (*Id.*) It is simply unnecessary, and inconsistent with the Court's order, to
20 disrupt participation in fire camps and other vital programs when the Court's benchmark
21 has been met.

22 **C. Defendants Have Exercised Their Discretion To Exclude Sex Offenders From**
23 **Those Eligible For Credit Increases**

24 This Court has consistently indicated its desire to create a flexible framework
25 within which Defendants may fashion reform measures designed to reduce the prison

26
27 ² Such job assignments include garage, recycle and refuse collections, Plant Operations
28 positions in support of institutional tradespersons, Caltrans, and city park crews. (*Id.* ¶ 5.)

1 population. (See, e.g., June 20, 2013 Order, *Plata D.E.* 2659 at 2:26: “[t]his Court
2 desires to continue to afford a reasonable measure of flexibility”; *Brown v. Plata*, 131
3 S.Ct. 1910, 1940 (2011): “The order of the three-judge court gives the State substantial
4 flexibility to determine who should be released.”) Within that framework, Defendants
5 implemented increased credits for non-violent second-strike offenders and excluded sex
6 offenders from this program in order to minimize the risks to public safety. Defendants
7 have always indicated that this population measure would exclude sex offenders.

8 As early as May 2, 2013, Defendants stated that a reform that increased the
9 credit-earning capacity of second-strike offenders would exclude sex offenders. (*Plata*
10 *D.E.* 2609 at 37:1-3: “Defendants estimate that the prison population could be reduced by
11 approximately 37 inmates by December 31, 2013 if the credit-earning capacity of inmates
12 convicted of “second-strike” felonies (*excluding sex offenders*) is expanded from 20% to
13 34%.” (emphasis added).)

14 Defendants’ seven monthly status updates to this Three-Judge Court since March
15 of this year have all stated that sex offenders are excluded from increased credit earning
16 programs for non-violent offenders. (Ex. B, *Plata D.E.* 2775-2; Ex. B, *Plata D.E.* 2780-2;
17 Ex. B, *Plata D.E.* 2789-2; Ex. B, *Plata D.E.* 2792-2; Ex. B, *Plata D.E.* 2800-2; Ex. B, *Plata*
18 *D.E.* 2809-2; Ex. B, *Plata D.E.* 2811-2.) Despite sex offenders’ ineligibility for enhanced
19 credit earning, Defendants nonetheless met and exceeded the most recent benchmark
20 by 2,000 inmates. (Defs.’ September 2014 Status Report, *Plata D.E.* 2811 at 2:6-7.)
21 Defendants should be afforded the discretion to determine how to implement these
22 measures in a manner consistent with the Court’s benchmarks and public safety.

23 III. CONCLUSION

24 Defendants have made significant strides in implementing population-reduction
25 reforms. The additional reforms Plaintiffs demand be implemented—extension of
26 enhanced credits to sex offenders and MSF inmates—are ill-advised and unnecessary
27 given the current status of the prison population. Accordingly, Defendants respectfully
28 request that this Three-Judge Court deny Plaintiffs’ motion.

1 Dated: September 30, 2014

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Attorney General of California

2

/s/ Patrick R. McKinney

3

PATRICK R. MCKINNEY
Supervising Deputy Attorney General
Attorneys for Defendants

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5

6 Dated: September 30, 2014

HANSON BRIDGETT LLP

7

/s/ Paul B. Mello

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PAUL B. MELLO
Attorneys for Defendants

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CASE NO. C01-1351 TEH
THREE-JUDGE COURT
**DECLARATION OF JENNIFER
SHAFFER IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
ENFORCEMENT ORDER**

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1 I, Jennifer Shaffer, declare:

2 1. I am the Executive Officer of the Board of Parole Hearings (BPH or the
3 Board) within the California Department of Corrections and Rehabilitation. I have held
4 this position since June 2011 when I was appointed by Governor Brown.

5 2. Before becoming the Board's Executive Officer, I served as the Board's
6 Chief of Hearing Operations for the Northern Region of California. Previously, I served in
7 the Bureau of Independent Review with the Office of the Inspector General as special
8 assistant inspector general from 2006 to 2008, and then as senior assistant inspector
9 general from 2008 to January 2011.

10 3. I am competent to testify to the matters set forth in this declaration, and if
11 called upon to do so, I would and could so testify. I submit this declaration in support of
12 Defendants' Opposition to Plaintiffs' Motion for Enforcement Order.

13 4. As Executive Officer, I am the administrative head of the Board. I am
14 responsible for managing the Board's daily operations and implementing policy. I am
15 familiar with the steps the Board has taken to develop and implement the elderly parole
16 process for inmates who are 60 years of age or older, have served at least 25 years of
17 actual custody, and are not serving a condemned sentence or term of life without the
18 possibility of parole.

19 5. In May 2014, BPH executed a contract with the Riley Group to update
20 BPH's information technology system so that it can pull additional information from
21 CDCR's information technology system. This system upgrade is necessary to ensure
22 that all inmates who are eligible for elder parole are appropriately identified and included
23 in the Board's system so they can be scheduled for hearings.

24 6. A public board meeting was held on June 16, 2014, at which time I
25 presented a memorandum to all commissioners and deputy commissioners detailing the
26 new Elderly Parole Program and its impact on parole suitability hearings. A true and
27 correct copy of this June 16, 2014 memorandum is attached as **Exhibit A**. At the same
28 public board meeting, commissioners and deputy commissioners were presented with an

1 overview of published research concerning the impact of advanced age and long-term
2 confinement on an inmate's potential risk of future violence.

3 7. As reported to the Court, many offenders eligible for the new elderly parole
4 process are already in the Board's parole suitability hearing cycle. As of June 20, 2014,
5 the Board has granted parole to 63 inmates who are over age 60 and who have served at
6 least 25 years. Additionally, the Board developed a revised format for risk assessments
7 to specifically address how advanced age, long-term confinement, and diminished
8 physical condition may impact an inmate's potential risk for future violence. All
9 commissioners and deputy commissioners were informed about the revised risk
10 assessment at a Board meeting in June. Use of the revised risk assessments will begin
11 on October 1, 2014, for hearings of elder inmates.

12 8. At Plaintiffs' counsel's request, I briefed Steve Fama from the Prison Law
13 Office on the topic of elder parole on July 11, 2014. Following the telephonic briefing, I
14 emailed Mr. Fama a copy of the June 16, 2014 memorandum regarding elder parole
15 (Exhibit A), research pertaining to felony arrest and CDCR new admissions data by age,
16 and a June 16, 2014 memorandum pertaining to expanded medical parole. A true and
17 correct copy of my email (without the exhibits) is attached as **Exhibit B**. Since that time,
18 I have never been contacted by Plaintiffs' counsel with any follow-up questions or
19 concerns regarding the implementation of elder parole. If asked, I would endeavor to
20 provide further clarification.

21

22 I declare under penalty of perjury that the foregoing is true and correct. Executed
23 in Sacramento, California on September 30, 2014.

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25

/s/ Jennifer Shaffer

Jennifer Shaffer

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Exhibit A

Memorandum

Date : June 16, 2014

Subject: **ELDERLY PAROLE PROGRAM**

The purpose of this memorandum is to provide an overview of the new Elderly Parole Program. On February 10, 2014, the Three Judge Panel in the *Plata/Coleman* class action lawsuit ordered CDCR to finalize and implement a new parole process whereby elderly inmates will be referred to the Board of Parole Hearings (board) to determine suitability for parole. The procedures for the new Elderly Parole Program will affect parole suitability hearings scheduled on or after October 1, 2014.

Eligibility

Inmates who are 60 years or older and who have been incarcerated for 25 years or more are eligible for the Elderly Parole Program. Eligible inmates may be serving an indeterminate or a determinate sentence.

Scheduling of Hearings

Eligible inmates who are not currently in the board's hearing cycle (i.e., those who are serving a determinate term or serving an indeterminate term and have not yet had their initial parole suitability hearing), will be referred by CDCR to the board and scheduled for an initial suitability hearing.

Eligible inmates who are currently in the board's hearing cycle (i.e., those who have already had their initial suitability hearing or will have it before October 1, 2014) will be considered for a new hearing consistent with the California Supreme Court's decision in *In re Vicks*, meaning the board will initially focus its resources on those inmates who are most likely to be found suitable for parole. This will be accomplished through administrative review of the inmate's record by the board for possible advancement of the inmate's next hearing date, if the board finds a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the inmate. Eligible inmates may also continue to petition to advance their next hearing pursuant to the provisions of Penal Code section 3041.5(d).

During the administrative review and the petition to advance processes, the board will give special consideration to eligible inmates' advanced age, long-term confinement, and diminished physical condition, if any. The board will also consider all other relevant information when determining whether or not there is a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the inmate, including institutional behavior and input from victims and victims' next-of-kin. If an eligible inmate is denied parole, the denial length will be set pursuant to Penal Code section 3041.5(b)(4) ("Marsy's Law") for 3, 5, 7, 10, or 15 years.

Risk Assessments

Inmates who are 60 years of age or older and who have served a minimum of 25 years and who are scheduled for a hearing on or after October 1, 2014, will receive a new or revised risk assessment, which will specifically address how the inmate's advanced age, long-term confinement, and diminished physical condition, if any, may impact the inmate's potential risk for future violence.

Panels and Procedure

Hearings will be conducted by two or three person panels; at least one panel member will be a Commissioner. All other parole suitability hearing procedures not impacted by the provisions outlined herein will be applied to elderly parole hearings.

Decision Review

Parole suitability hearing decisions for elderly parole inmates will be reviewed in the same manner as all other parole suitability hearing decisions.

Term Calculations

Inmates who are found suitable for elderly parole and who are serving an indeterminate term will be released to parole when their grant becomes final (after all applicable reviews). Inmates who are found suitable for elderly parole and who are serving a determinate term will be released to parole when their grant becomes final.

Exhibit B

From: Shaffer, Jennifer@CDCR

Sent: Friday, July 11, 2014 5:12 PM

To: 'SFama@prisonlaw.com'; Tebrock, Katherine@CDCR; Moseley, Howard

Subject: Medical and Elderly Parole Conference Call

Good Evening,

Attached are the documents to which we referred today concerning expanded medical parole and elderly parole.

Thank you,

Jennifer P. Shaffer

Executive Officer

Board of Parole Hearings

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CASE NO. C01-1351 TEH
THREE-JUDGE COURT
**DECLARATION OF ROSS MEIER IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION
FOR ENFORCEMENT ORDER**

1 I, Ross Meier, declare as follows:

2 1. I am an Associate Warden for the California Department of Corrections and
3 Rehabilitation (CDCR) assigned to California State Prison, Sacramento County. Prior to
4 that, I was the Chief of the Population Management Unit of the Division of Adult
5 Institutions for CDCR from March 2010 to October 2012. I have helped develop the
6 State's comprehensive post-realignment plan. I am competent to testify to the matters
7 set forth in this declaration, and if called upon to do so, I would and could so testify. I
8 submit this declaration in support of Defendants' opposition to Plaintiffs' motion for
9 enforcement order.

10 2. I am currently working to assist in the implementation of an entirely new
11 parole review process for non-violent second-strike offenders. This is a time-consuming
12 process that requires the development of eligibility criteria, the process for reviewing
13 cases, creating staff roles, and integrating this new measure into existing information
14 technology systems.

15 3. In order to successfully establish this new process, I helped develop a
16 detailed proposed plan that sets forth how and when the hearings are conducted, the
17 criteria for eligibility review, and identification of the appropriate staff for the initial case
18 file review and assessment. CDCR is developing an implementation process that
19 includes, but is not dependent upon, the regulatory process.

20 4. Additionally, information technology systems must be updated to support
21 the new process. CDCR's information technology system, the Strategic Offender
22 Management System (SOMS), must be updated so that it can identify second-striker
23 eligibility and interface with the Board of Parole Hearing's information technology system,
24 the Lifer Scheduling and Tracking System (LSTS). To that end, the May Revision to the
25 Governor's budget included additional funding to update these systems.

26 5. Each of these steps is necessary to ensure the viability of this new parole
27 review process. I anticipate that the new parole review process will commence prior to
28 July 1, 2015, and that inmates paroled under this new process will primarily impact the

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CASE NO. C01-1351 TEH
THREE-JUDGE COURT
**DECLARATION OF VIMAL SINGH IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION
FOR ENFORCEMENT ORDER**

1 I, Vimal Singh, declare as follows:

2 1. I am the Associate Director of the Reception Centers Mission for the
3 California Department of Corrections and Rehabilitations. I have held this position since
4 June 20, 2013. My job duties include oversight of 10 institutions, including 5 reception
5 center institutions, condemned housing units, 4 institutions where fire camps are located,
6 and the minimum support facility (MSF) operations at these institutions. I am competent
7 to testify to the matters set forth in this declaration, and if called upon to do so, I would
8 and could so testify. I submit this declaration in support of Defendants' opposition to
9 Plaintiffs' motion for enforcement order.

10 2. Fire camp placement has grown increasingly difficult as the number of
11 potentially eligible inmates has diminished following realignment. This is because strict
12 criteria limit fire camp eligibility to low-level, non-violent offenders, among other criteria
13 relating to time left to serve, commitment offense, medical clearance, and in-custody
14 behavioral history. These strict eligibility criteria are necessary because fire camp
15 participants are housed in non-secure facilities. Additionally, in their role as firefighters,
16 these inmates are in contact with local communities and members of the public.

17 3. Fire camp participants must undergo a rigorous physical fitness training
18 program and must meet certain minimum threshold fitness requirements to qualify for
19 placement into the program. There are many inmates who, despite being eligible for fire
20 camp placement based on their classification score, commitment offense, and behavioral
21 history, cannot pass or choose not to complete the training program.

22 4. To incentivize participation in this voluntary program, CDCR offers 2-for-1
23 credits to maintain an adequate stream of inmate volunteers. As a result of regular
24 attrition through parole and/or disciplinary action, there is a constant need for volunteers.

25 5. CDCR also offers low-level, non-violent inmates the opportunity to be
26 placed in a minimum support facility (MSF), where inmates perform a variety of job duties
27 *outside* a prison's secure perimeter that are critical to the daily functioning of each
28 institution, including garage, recycle and refuse collections, and various Plant Operations

1 positions in support of institutional tradespersons. MSF inmates also perform jobs
2 essential to local communities, such as Caltrans and city park crews. MSF inmates,
3 unlike fire camp inmates, do not have to undergo a strenuous physical fitness training
4 program and are therefore not required to meet certain physical eligibility criteria.

5 6. The extension of 2-for-1 credits to all MSF inmates would likely make fire
6 camp beds even more difficult to fill, as low-level, non-violent inmates would choose to
7 participate in the MSF program rather than endure strenuous physical activities and risk
8 injury in fire camps.

9 7. I also believe that extending 2-for-1 credits solely to MSF inmates who are
10 fire camp ineligible would also impact fire camp participation. Nearly two-thirds of the
11 MSF population is not qualified to volunteer for fire camp placement. By extending 2-for-
12 1 credits to the majority of the MSF population, higher turnover would result, creating an
13 even greater demand for low-level, non-violent inmates. Because the population of low-
14 level, non-violent inmates is already strained, CDCR would be forced to draw down its
15 fire camp population to fill these vital MSF positions. This would further deplete the fire
16 camp population.

17 I declare under penalty of perjury that the foregoing is true and correct. Executed
18 in Sacramento, California on September 30, 2014.

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/s/ Vimal Singh

Vimal Singh

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8 Attorneys for Defendants
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10 **UNITED STATES DISTRICT COURT**
11 **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.

CASE NO. 2:90-cv-00520 KJM DAD P

THREE-JUDGE COURT

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

CASE NO. C01-1351 TEH

THREE-JUDGE COURT

**DECLARATION OF SAMANTHA WOLFF
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION
FOR ENFORCEMENT ORDER**

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1 I, Samantha Wolff, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and
3 before this Court. I am senior counsel at the law firm Hanson Bridgett LLP, attorneys of
4 record for Defendants Edmund G. Brown Jr., et al. (Defendants). I have personal
5 knowledge of the matters set forth in this declaration, and if called upon to do so, would
6 and could competently testify to the matters set forth below.

7 2. On August 12, 2014, Rebekah Evenson, Plaintiffs' counsel, emailed Ben
8 Rice, General Counsel for the California Department of Corrections and Rehabilitation
9 (CDCR), stating that she would like to meet with Mr. Rice to discuss the issue of
10 enhanced credits for minimum custody inmates. A true and correct copy of Ms.
11 Evenson's email is attached as **Exhibit A**.

12 3. Ms. Evenson followed up with Mr. Rice on August 25, 2014, and Mr. Rice
13 responded that same day that Defendants were still gathering information and would
14 respond soon.

15 4. On September 15, 2014, I responded to Ms. Evenson and explained why
16 CDCR cannot extend 2-for-1 credits to minimum custody inmates without depleting fire
17 camp participation. A true and correct copy of my September 15, 2014 email to Ms.
18 Evenson is attached as **Exhibit B**.

19 5. Ms. Evenson never responded to my email or called with any questions.
20 Nor did Ms. Evenson attempt to schedule a meeting to discuss the matter further, as her
21 August 12, 2014 email had requested. Instead, Ms. Evenson filed the instant motion for
22 an enforcement order the following day.

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1 6. Further, to my knowledge, Plaintiffs' counsel never attempted to meet and
2 confer with Defense counsel on the additional topics addressed in their motion for
3 enforcement order, including elder parole, second-striker parole, and enhanced credit
4 earning for sex offenders.

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6 I declare under penalty of perjury the foregoing is true and correct. Executed on
7 September 30, 2014 in Walnut Creek, California.

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 /s/ Samantha Wolff
 Samantha Wolff

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Exhibit A

From: Rebekah Evenson [<mailto:revenson@prisonlaw.com>]
Sent: Tuesday, August 12, 2014 11:22 AM
To: Rice, Benjamin@CDCR
Cc: Don Specter; Tebrock, Katherine@CDCR
Subject: three judge/ minimum custody credits

Ben,

We would like to talk to you about the status of implementation of the Court's Feb. 10 order. Specifically, we'd like to discuss t minimum custody credit earning.

Your statements have told the court you are "evaluating" the additional 2:1 minimum custody credits, but the Feb 10 order requires that CDCR "immediately" implement that measure: "Minimum custody inmates will be eligible to earn 2-for-1 good time credits to the extent such credits do not deplete participation in fire camps where inmates also earn 2-for-1 good time credits."

As you know, there are many minimum custody inmates who are ineligible for fire camps, and for whom granting credits could never "deplete participation in fire camps." For example, prisoners with significant disabilities – or serious medical conditions, or less than a year to serve -- cannot go to fire camp. Preventing them from earning 2:1 credits would have no impact on participation in fire camps.

We'd like to meet to discuss with you:

1. immediately granting the credits to min custody prisoners who are ineligible for fire camp due to 1) disability; 2) medical condition; 3) length of time remaining on sentence; and
2. Your analysis about whether granting 2:1 credits to all minimum custody inmates would deplete participation in fire camps.

Please let us know some times in the next three weeks when you are available to meet.

Best,
Rebekah and Don

Rebekah Evenson
Staff Attorney
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Fax (510) 280-2704
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Exhibit B

Samantha Wolff

From: Samantha Wolff
Sent: Monday, September 15, 2014 12:42 PM
To: revenson@prisonlaw.com
Cc: 'benjamin.rice@cdcr.ca.gov'; Katherine Tebrock; Paul B. Mello; 'Jonathan Wolff'; 'jay.russell@doj.ca.gov'; Patrick McKinney ; Maneesh Sharma; Gabriel Sanchez
Subject: Plata/Three Judge Court - MSF credits

Rebekah,

Thank you for your patience in awaiting our response to your question pertaining to MSF inmates. MSF and fire camp are independent and unique programs that serve different goals and have different eligibility criteria. Whether or not an inmate is qualified for either program is determined separately, with evaluations being done on a case-by-case basis. At this time, CDCR does not plan to extend 2-for-1 credits, which are part of the fire camp program, to the MSF program. CDCR has determined that the extension of such credits would fundamentally alter and adversely affect both the fire camp and MSF programs. CDCR will therefore not be adding 2-for 1 credits to the MSF program. CDCR continues to reevaluate this decision on an ongoing basis.

As you will soon learn from Defendants' September 15, 2014 status update, CDCR will meet and exceed the 143% benchmark. Indeed, we anticipate that CDCR will be at least 2,000 inmates *below* the benchmark. Because CDCR has continued to meet its benchmarks, we do not believe that it is necessary at this time to consider the implementation of additional credit-earnings to the detriment of program participation. CDCR will reevaluate this decision when and if the need arises.

Additionally, and as you noted in your August 12 email to Ben Rice, the Court's February 10 order provides that Defendants should implement 2-for-1 credit-earning for minimum custody inmates *so long as* such credit-earnings do not deplete fire camp participation. After extensively studying this issue, we have serious concerns about the impact of increased credit-earning to a different program for non-fire camp participants. It has become increasingly difficult to fill fire camp openings, due in part to the vigorous physical fitness training program that is required of the participants, and the decline of potentially eligible inmates following realignment. To incentivize participation, CDCR offers fire camp participants 2-for-1 credits. If inmates were awarded the same credit-earnings for MSF participation, which does not have any physical fitness requirements, it would compound the difficulties CDCR already faces in filling fire camp openings.

Further, awarding 2-for-1 credits to a subset of MSF inmates who are not qualified for fire camp placement would not assist CDCR in relieving crowding and would detrimentally impact MSF operations. MSF inmates perform a variety of job duties outside the secure perimeter, including assignments critical to the continued operation of the institution such as warehouse, garage, out grounds, recycle and refuse collections, as well as various Plant Operations positions in support of institutional tradespersons. Additionally, many of these inmates provide important service to our communities through assignment to Off-Reservation Community Work Crews. Almost two-thirds of the MSF population is not qualified for fire camp placement. If these inmates were granted 2-for-1 credits, it would become increasingly difficult, if not impossible, to staff MSF jobs that are necessary to prison operations. In order to staff critical MSF jobs, CDCR would have to place Fire Camp qualified inmates in the MSF beds, which would diminish the number of fire camp inmates. Moreover, the MSF population is not currently experiencing crowding. Simply put, this is not the place to focus crowding-reduction efforts since crowding is not an issue for this population and their participation in MSF jobs is critical to prison operations.

CDCR continues to monitor and consider these and other programs for credit-earning incentives on an ongoing basis.

Sincerely,
Samantha

Samantha Wolff

Senior Counsel

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swolff@hansonbridgett.com



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