

No. S232642

MAR 07 2016

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

Frank A. McGuire Clerk

Deputy

GOVERNOR EDMUND G. BROWN JR., MARGARET R. PRINZING,  
and HARRY BEREZIN,

*Petitioners,*

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO,

*Respondent.*

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION,  
ANNE MARIE SCHUBERT, an individual and in her personal capacity,  
and KAMALA HARRIS, in her official capacity as  
Attorney General of the State of California,

*Real Parties in Interest.*

Writ Regarding Order by the Sacramento County Superior Court,  
Case No. 34-2016-80002293-CU-WM-GDS, Department 24,  
Phone No.: (916) 874-6687, The Honorable Shelleyanne Chang, Presiding

**GOVERNOR EDMUND G. BROWN JR.'S  
SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE;  
DECLARATION OF MICHAEL NARCISO**

**CRITICAL DATE: FEBRUARY 26, 2016**

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Attorneys for Petitioners  
Governor Edmund G. Brown Jr.  
Margaret R. Prinzing, and Harry Berezin

## SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE

Pursuant to California Rule of Court 8.252 and California Evidence Code section 452, petitioner Governor Edmund G. Brown Jr. hereby requests that the Court take judicial notice of the March 4, 2016 Order Requiring Additional Reporting from the Three-Judge Court convened from the Northern District of California, *Plata, et al. v. Brown, et al.* (No. 3:01-cv-01351-TEH) and the Eastern District of California, *Coleman, et al. v. Brown, et al.* (No. 2:90-cv-00520 KJM-KJN), attached as Exhibit 1 to the Declaration of Michael Narciso.

Exhibit 1 is an official court record and is the proper subject of judicial notice under Evidence Code section 452(d). (*Forty-Niner Truck Plaza, Inc. v. Union Oil Co.* (1997) 58 Cal.App.4th 1261, 1277, fn. 7 [taking judicial notice of federal court orders].)

Exhibit 1 is relevant to a factual dispute between the parties concerning the importance of placing the Public Safety and Rehabilitation Act on the November 2016 ballot rather than a later ballot. In the Preliminary Opposition of Real Parties in Interest California District Attorneys Association and Anne Marie Schubert, real parties disputed whether the proposed measure was needed to address the federal mandate to reduce California's state prison population, because the prison population was already below the court-ordered benchmark of 137.5% of design capacity. In reply, petitioners explained that the State has been ordered to reduce its out-of-state prison population, and that the federal court will retain oversight until the State has established that its compliance with the population benchmark is durable.

On March 4, 2016, three days after petitioners filed their Reply Brief in this action, the three-judge court issued an Order Requiring

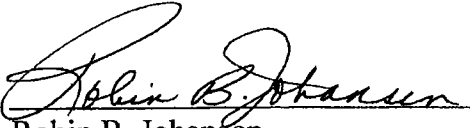
Additional Reporting, in which it concluded that “[a]dditional work remains for [the State] to demonstrate that they can maintain compliance with the population benchmark in the absence of court-ordered remedies” given that the in-state prison population is increasing and the out-of-state prison population still exceeds 5,000 inmates.

Based upon the above authorities, Governor Brown respectfully requests that the Court take judicial notice of Exhibit 1 to the Declaration of Michael Narciso.

Dated: March 7, 2016

Respectfully submitted,

REMCHO, JOHANSEN & PURCELL, LLP

By:   
Robin B. Johansen

Attorneys for Petitioners  
Governor Edmund G. Brown Jr.,  
Margaret R. Prinzing, and Harry Berezin

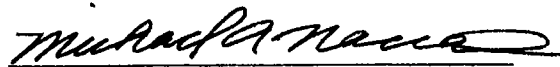
**DECLARATION OF MICHAEL NARCISO**

I, Michael Narciso, declare under penalty of perjury that:

1. I am the paralegal at Remcho, Johansen & Purcell, LLP, attorneys for petitioners Governor Edmund G. Brown, Margaret R. Prinzing, and Harry Berezin in this case. I submit this declaration in connection with the supplemental request for judicial notice in support of the petition for writ of mandate filed by petitioners.

2. Attached as Exhibit 1 is a true and correct copy of the March 4, 2016 Order Requiring Additional Reporting from the three-judge court convened from the Northern District of California case, *Plata, et al. v. Brown, et al.* (No. 3:01-cv-01351-TEH) and the Eastern District of California case, *Coleman, et al. v. Brown, et al.* (No. 2:90-cv-00520 KJM-KJN). A copy of this order was obtained on March 5, 2016 from PACER through the Northern District of California's website at <https://ecf.cand.uscourts.gov/>.

I declare under penalty of perjury that the foregoing is true and correct. I have firsthand knowledge of the same, except as to those matters described on information and belief, and if called upon to do so, I could and would testify competently thereto. Executed this 7th day of March, 2016, in San Leandro, California.



MICHAEL NARCISO

**EXHIBIT A**

United States District Court  
Northern District of California

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

Case No. 2:90-cv-0520 KJM KJN P

**THREE-JUDGE COURT**

Case No. 01-cv-01351-TEH

**THREE-JUDGE COURT**

**ORDER REQUIRING ADDITIONAL  
REPORTING**

On February 10, 2014, this court granted defendants' request for a two-year extension in which to comply with the court's June 30, 2011 order to reduce California's in-state adult institution population to no more than 137.5% of design capacity. The two-year extension gave defendants until February 28, 2016 to meet the court-ordered reduction. Feb. 10, 2014 Order at 2 (ECF No. 2766/5060).<sup>1</sup> Since receiving the extension, defendants have made laudable progress, and achieved compliance with the percentage

<sup>1</sup> All filings in this Three-Judge Court are included in the individual docket sheets of both *Plata v. Brown*, No. 01-cv-01351-TEH (N.D. Cal.), and *Coleman v. Brown*, No. 2:90-cv-0520 KJM KJN P (E.D. Cal.). This court includes the docket number of *Plata* first, then *Coleman*.

1 benchmark one year early, with the population remaining below the benchmark since  
 2 February 2015:

Date	In-state adult institution population	% Design Capacity	Out-of-state population	In-state private prison population (California City)	In-state contract bed capacity (MCCFs) <sup>2</sup>
February 11, 2015	112,993	136.6%	8,828	1,973	4,218
March 11, 2015	112,106	135.5%	8,778	1,893	4,218
April 8, 2015	111,863	135.3%	8,394	1,999	4,218
May 13, 2015	111,341	134.6%	8,060	2,152	4,218
June 10, 2015	111,370	134.7%	7,726	2,308	4,218
July 8, 2015	111,168	134.4%	7,277	2,339	4,218
August 12, 2015 <sup>3</sup>	111,485	134.8%	6,961	2,225	4,218
September 9, 2015	111,656	135.0%	6,508	2,245	4,218
October 14, 2015	112,195	135.7%	5,907	2,147	4,218
November 11, 2015	112,350	135.8%	5,447	2,071	4,218
December 9, 2015	112,510	136.0%	5,264	1,978	4,218
January 13, 2016	112,737	136.3%	5,173	1,882	4,218
February 10, 2016	112,887	136.5%	5,088	1,813	4,218

21 See Defs.' Monthly Status Reports (ECF Nos. 2838/5278, 2842/5289, 2846/5300,  
 22 2848/5306, 2860/5322, 2862/5331, 2864/5336, 2870/5354, 2874/5368, 2876/5379,

24 <sup>2</sup> Defendants' monthly reports all state that there are 4,218 MCCF (modified  
 25 community correctional facility) beds "that are in various stages of activation and  
 transfer."

26 <sup>3</sup> The court uses the figures on page 1 of Defendants' August status report, which  
 27 appear to be correct based on the weekly report available at [http://www.cdcr.ca.gov/](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOPIA/TPOP1)  
 28 Reports\_Research/Offender\_Information\_Services\_Branch/WeeklyWed/TPOPIA/TPOP1  
 Ad150812.pdf. The figures at the top of Exhibit A to the August report appear not to have  
 been updated from the July report.

United States District Court  
Northern District of California

United States District Court  
Northern District of California

1 2880/5388, 2882/5400, 2886/5411). Even as the benchmark has been attained, as reflected  
2 in the above table, however, the in-state adult institution population has been gradually  
3 increasing since July 2015. Part of this growth is due to the State's commendable efforts  
4 to return inmates from out-of-state facilities, but there still remain over 5,000 inmates in  
5 out-of-state facilities. There are also approximately 5,500 inmates housed in in-state  
6 contract facilities.<sup>4</sup> Moreover, defendants project that the total number of inmates will  
7 increase by over 3,600 over the next few years, which in itself threatens to push the  
8 population back over the threshold. *See An Update to the Future of California*  
9 *Corrections: January 2016* at 25, available at [http://www.cdcr.ca.gov/Blueprint-Update-](http://www.cdcr.ca.gov/Blueprint-Update-2016/An-Update-to-the-Future-of-California-Corrections-January-2016.pdf)  
10 [2016/An-Update-to-the-Future-of-California-Corrections-January-2016.pdf](http://www.cdcr.ca.gov/Blueprint-Update-2016/An-Update-to-the-Future-of-California-Corrections-January-2016.pdf).

11 The court commends defendants for achieving the required reduction in the current  
12 in-state adult institution population. It also commends the parties for working  
13 cooperatively to ensure that the court's orders are fully implemented. *E.g.*, Stip. & Order  
14 in Response to Nov. 14, 2014 Order (ECF No. 2830/5254).

15 At the same time, as this court has previously ordered and as defendants recognize,  
16 the court will "maintain jurisdiction over this matter for as long as is necessary to ensure  
17 that defendants' compliance with the 137.5% final benchmark is durable, and such  
18 durability is firmly established." Feb. 10, 2014 Order at 5. Additional work remains for  
19 defendants to demonstrate that they can maintain compliance with the population  
20 benchmark in the absence of court-ordered remedies. To that end, defendants shall

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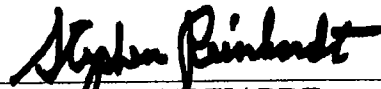
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26 <sup>4</sup> As of midnight February 10, 2016, which is the source of the population data in  
27 defendants' most recent status report, there were 5,530 inmates housed in in-state contract  
28 beds, including the 1,813 inmates housed at California City. *See* CDCR, Weekly Rpt. of  
Offender Information Services Branch/WeeklyWed/TPOPIA/TPOPIAd160210.pdf.




1 continue to report to the court monthly as required by the February 10, 2014 Order. *Id.*  
2 at 3. Defendants' monthly reports shall include a discussion of the steps defendants are  
3 taking to ensure that compliance with the 137.5% benchmark is durable.

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5 **IT IS SO ORDERED.**


6  
7 Dated: 03/04/16

  
STEPHEN REINHARDT  
UNITED STATES CIRCUIT JUDGE  
NINTH CIRCUIT COURT OF APPEALS

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11 Dated: 03/04/16

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

12  
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15 Dated: 03/04/16

  
KIMBERLY J. MUELLER  
UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF CALIFORNIA

United States District Court  
Northern District of California

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**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On March 7, 2016, I served a true copy of the following document(s):

**Governor Edmund G. Brown Jr.'s  
Supplemental Request for Judicial Notice;  
Declaration of Michael Narciso**

on the following party(ies) in said action:

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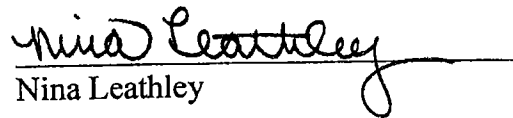
*Attorneys for Real Party in Interest  
Attorney General of the State of  
California and Kamala Harris*

Clerk to the  
Honorable Shelleyanne Chang  
Sacramento County Superior Court  
720 Ninth Street, Department 24  
Sacramento, CA 95814  
(By Overnight Delivery)

- BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and
- depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
  - placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.
- BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.
- BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.

**BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on March 7, 2016, in San Leandro, California.

  
Nina Leathley

(00269175-3)