

1 Gregg McLean Adam, No. 203436  
Natalie Leonard, No. 236634  
2 James W. Henderson, Jr., No. 071170  
**CARROLL, BURDICK & McDONOUGH LLP**  
3 Attorneys at Law  
44 Montgomery Street, Suite 400  
4 San Francisco, CA 94104  
Telephone: 415.989.5900  
5 Facsimile: 415.989.0932  
Email: gadam@cbmlaw.com  
6

7 Daniel M. Lindsay, No. 142895  
**CALIFORNIA CORRECTIONAL**  
**PEACE OFFICERS' ASSOCIATION**  
8 755 Riverpoint Drive, Suite 200  
West Sacramento, CA 95605-1634  
9 Telephone: 916.372.6060  
Facsimile: 916.340.9372  
10 E-Mail: dan.lindsay@ccpoa.org

11 Attorneys for Plaintiff Intervenor California Correctional  
Peace Officers' Association  
12

13 IN THE UNITED STATES DISTRICT COURTS  
14 FOR THE NORTHERN AND EASTERN DISTRICTS OF CALIFORNIA  
15 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES  
PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

16 MARCIANO PLATA, *et al.*,

17 Plaintiffs,

18 v.

19 ARNOLD SCHWARZENEGGER, *et al.*,

20 Defendants.

21 RALPH COLEMAN, *et al.*,

22 Plaintiffs,

23 v.

24 ARNOLD SCHWARZENEGGER, *et al.*,

25 Defendants.  
26  
27  
28

No. Civ C01-1351 TEH (N.D. Cal.) *and*

No. Civ S90-0520 LKK-JFM (E.D. Cal.)

**THREE-JUDGE COURT**

**PLAINTIFF INTERVENOR CALIFORNIA  
CORRECTIONAL PEACE OFFICERS'  
ASSOCIATION'S PROPOSED FINDINGS  
OF FACT AND CONCLUSIONS OF LAW**

1 The California Correctional Peace Officers' Association ("CCPOA") submits  
2 its Proposed Findings of Fact and Conclusions of Law in response to this Court's Order of  
3 January 8, 2009. (Docket No.1998.)

4 CCPOA intervened in this proceeding because the impact of the severe  
5 overcrowding in California's state prisons falls squarely on CCPOA members with a force  
6 second only to that experienced by the inmates themselves. Daily, CCPOA members  
7 witness the damaging consequences that overcrowding has on inmates' ability to remain  
8 healthy or access medical and mental health care. CCPOA members suffer their own  
9 risks due to overcrowding. (See *Plata* Docket Nos. 828, 857; *Coleman* Docket Nos. 2402,  
10 2427.) During trial, CCPOA supplemented the Plaintiffs' testimony by conveying the  
11 day-to-day reality of current prison conditions to the Court.

12 The testimony in this trial establishes that overcrowding is *the primary cause*  
13 of the violation of Plaintiffs' Eighth Amendment Constitutional right to be free from cruel  
14 and unusual punishment.

## 15 I

### 16 PROCEDURAL HISTORY

17 Plaintiffs are classes of inmates incarcerated in correctional facilities run by the  
18 California Department of Corrections and Rehabilitation ("CDCR") in two separate  
19 lawsuits. *Ralph Coleman, et al. v. Arnold Schwarzenegger, et al.*, U.S. District Court,  
20 (E.D. Cal.), Case No. 2:90-CV-00520 and *Marciano Plata, et al., v. Arnold*  
21 *Schwarzenegger, et al.*, U.S. District Court, (N.D. Cal.), Case No. C01-1351 TEH.  
22 Defendants are violating Plaintiffs' Eighth Amendment rights due to the inadequate  
23 medical and mental health care Defendants provide to inmates.

24 The Court identified the constitutional violations in the *Coleman* case on  
25 September 13, 1995, while the findings of fact issued in *Plata* on October 3, 2005. (See  
26 *Plata* Docket No. 378; see also *Coleman*, 912 F. Supp at 1282 (E.D. Cal. 1995))

27 When the violations continued, each Plaintiff class filed a Motion to Convene a  
28 Three Judge-Panel to Limit Prison Population pursuant to 18 U.S.C. §§ 3626, *et seq.* and

1 28 U.S.C § 2284 (The Prison Litigation Reform Act or “PLRA”) on November 13, 2006.  
2 Both those motions were eventually granted on July 23, 2007, and the Ninth Circuit  
3 consolidated the proceedings here before one Three Judge-Panel. (*Plata* Docket No. 784;  
4 *Coleman* Docket No. 2328.)

5 This Three-Judge Panel has a single focus, defined by statute: to determine  
6 whether overcrowding is the primary cause of the violation and whether only a prisoner  
7 release order can remedy the violation.<sup>1</sup> Specifically, the PLRA states:

8 (E) The three-judge court shall enter a prisoner release order only if  
9 the court finds by clear and convincing evidence that --

10 (i) crowding is the primary cause of the violation of a Federal right;  
and

11 (ii) no other relief will remedy the violation of the Federal right.

12 18 U.S.C. § 3626 (a)(E)(i-ii)

13 The Three Judge Panel bifurcated its proceedings into two phases and heard  
14 testimony from November 18, 2008 through December 19, 2008. Phase I addressed  
15 whether overcrowding is the primary cause of the unconstitutional conditions, while Phase  
16 II evaluated whether a prisoner release order, as defined by the statute, should issue in this  
17 case. CCPOA provided testimony only with respect to Phase I issues and confines its  
18 proposed findings to Phase I.

## 19 II

### 20 HISTORICAL BACKGROUND AND CONTEXT

21 In October 2006, the Governor issued a Proclamation declaring a Prison  
22 Overcrowding State of Emergency. See <http://gov.ca.gov/index.php?/proclamation/4278/>,  
23 last visited January 23, 2009. The Legislature responded in 2007 with a package of bills  
24 known as AB900 (2003-2004 Reg. Sess.) designed to increase the number of general  
25

---

26 <sup>1</sup> This Three Judge Panel was not convened to determine whether there is constitutional  
27 compliance. (R.T. 6:24-25; 7:1-9.) Instead, the Three Judge Panel advised the  
28 Defendants to submit any such evidence of constitutional compliance to the *Coleman* and  
*Plata* courts directly. *Id.*

1 prison beds available, but not specifically focusing on medical or mental health care  
2 facilities. (R.T. 2468:13-16.) Now, nearly two years later, not a single bed has been built  
3 under that legislation and further meaningful legislative action has not occurred. *Id.*  
4 During trial, the legislature passed language that would have released part of the funding  
5 under AB900, but did so in a bill vetoed by the Governor. *Id.*

### 6 III

#### 7 FINDINGS OF FACT AND CONCLUSIONS OF LAW

##### 8 A. **Overcrowding is the Primary Cause of the Constitutional Violations** 9 **by Clear and Convincing Evidence.**

10 The PLRA requires that this Court determine whether clear and convincing  
11 evidence establishes that overcrowding is the primary cause of the constitutional  
12 violations at issue. For the reasons highlighted below, taken in concert with the findings  
13 of fact that Plaintiffs propose, and considering the limited actions that Defendants have  
14 been willing or able to take to date, the Court should find that overcrowding is the primary  
15 cause of the violation by clear and convincing evidence.

16 Overcrowding overwhelms available treatment space and slows down delivery  
17 of care due to lockdowns and other impediments. Overcrowding wears down the prison  
18 buildings and the people who staff them. The following facts provide a representative, but  
19 not exhaustive, list of the ways the overcrowding perpetuates the constitutional violations.

##### 20 1. **Overcrowding Makes Prisons Unnecessarily Unsanitary** 21 **and Unhealthy.**

22 Overcrowding in California's prisons leads to more significant illness than one  
23 would find in a properly run prison with proper population. (R.T. 305:24-25; 306:1-3.)  
24 The conditions can also cause mental illness, or cause mental health conditions to further  
25 deteriorate. (R.T. 304:16-19.)

26 Diseases spread unnecessarily due to the close quarters in CDCR prisons.  
27 CDCR does not tell staff or inmates which inmates have infection diseases. Moreover,  
28 there is no room to quarantine infected inmates. These circumstances increase the spread

1 of infection and increase mistrust between inmates. (R.T. 696:18-23.) One correctional  
2 officer testified that he contracted a serious life-threatening infection at work that caused  
3 serious permanent medical problems. (R.T. 605:1-10; 695:1-10; 1669:6-19.) Inmates  
4 routinely wash their clothes in toilets to protect themselves from infection. (R.T. 570:2-  
5 17.) Infected inmates often fail to report disease, fearing that seeking treatment will cause  
6 other inmates to victimize or shun them in their close living quarters. (R.T. 694:14-25.)  
7 One inmate treated his infection with a spoon in his cell, rather than seeking treatment.  
8 (R.T. 693:7-13.)

9 It is also hard to keep the facilities clean. For example, bathrooms are dirty  
10 just moments after they are cleaned and often have broken equipment, further stressing  
11 inadequate facilities. (R.T. 699:11-18; 707:2-13.)

12 **2. Overcrowding delays access to care and reduces quality of**  
13 **care.**

14 **a. Staff and space shortages make transporting inmates**  
15 **to their appointments more difficult.**

16 Overcrowding impacts access to the appropriate levels of care. (R.T. 304:11-  
17 12.) At California Medical Facility -- one of the *less* crowded facilities -- a pool of twelve  
18 escorts takes inmates to their medical appointments. (R.T. 504:9.) On any given day, as  
19 many as half these escort officers may be pulled away from this duty to take inmates to  
20 off-site hospitals, which slows access to appointments back at the prison. (R.T. 504:9:  
21 506:3-25.) Two officers must escort each inmate taken off-site and wait with the inmate  
22 for the duration of his care. (R.T. 505:11-506:11.) Officers from other posts may be  
23 pulled away from their duties to cover the shortfall, impacting other areas of the prisons.  
24 (R.T. 506:23-25.) This is very disruptive in a situation where inmates may already be  
25 waiting hours for medical and mental health care appointments. (R.T. 509:4.)

26 **b. Overcrowding makes it more difficult to monitor**  
27 **inmates who may need assistance.**

28 San Mateo County Sheriff Greg Munks opined that prisons become dangerous  
and difficult to operate when they approach their “functional capacity,” which is five to

1 ten percent below their “rated capacity.” (R.T. 1776:7-1777:2.) By comparison, CDCR  
2 prisons are at approximately 195% of “designed bed capacity” (which is equivalent to  
3 rated capacity). (R.T. 270:1-3.) This level of overcrowding makes it difficult for  
4 correctional officers to monitor inmates for safety or health due to the crowding because it  
5 is hard to see past the triple height bunks in many of the dorms. (R.T. 693:15-21.)

6 **c. Overcrowding forces prisons to use inappropriate**  
7 **spaces to provide care.**

8 The prisons utilize inappropriate spaces to provide medical or mental health  
9 care due to lack of space. At Salinas Valley, for example, inmates on suicide watch wait  
10 for a crisis bed while standing in cages in a utility room where noise from the machinery  
11 in the immediate area is so loud that it is difficult even to converse. (R.T. 308:8-12.) At  
12 Solano State Prison, doctors share an examination room with a secretary who witnesses all  
13 exams. (R.T. 664:6-16.)

14 The Director of Long-Term Care Services at the California Department of  
15 Mental Health admitted she had heard that some clinicians had stopped referring their  
16 inmate clients to the Department of Mental Health because they believed that there would  
17 not be room for them. (R.T. 821:1-9.)

18 Medical waiting areas are dangerous, inmates of multiple security levels are  
19 forced to wait together for hours in hallways or cages for their scheduled appointments.  
20 (R.T. 508:1-509:17.) This causes both health and security concerns for inmates and staff  
21 alike.

22 **d. Frequent lockdowns exacerbate transport problems**  
23 **and decrease medical privacy.**

24 Plaintiffs’ expert Dr. Haney opined as follows:

25 Lockdowns are used in the California Department of Corrections ...  
26 because of the profound level of overcrowding ... [p]risoners ... are  
27 essentially with out programs during the periods of time that the  
28 lockdown is in place. There are housing units in the California  
Department of Corrections that are locked down more often than  
they are unlocked.

1 (R.T. 316:21-25; 317:1-14.) One correctional officer explained, “A lockdown actually  
2 increases the number of inmates I have to go get, because the fact the institution is on  
3 lockdown, the inmates can’t just come on their own. So even a general population or  
4 mainline inmate might require an escort.” (R.T. 525:2-5.) Thus, it takes more resources  
5 and time to provide care during a lockdown.

6 Even during non-lockdown days, errors occur due to insufficient time to check,  
7 crush and administer medicine. (R.T. 670, 672-673.) At Solano State Prison, a trained  
8 nurse witnessed daily errors related to insulin delivery and mis-delivery of prescription  
9 drugs, such as confusing prednisone with penicillin. (R.T. 661:19-663:8; 668:10-21.)

10 Frequent lockdowns increase logistical problems and decrease medical  
11 privacy. At Chuckawalla Valley State Prison, during lockdowns, the intercom announces  
12 that “hotmeds” have arrived and instructs inmates to report to the nurse in full view of  
13 other inmates to pick up those pills at the center of their housing units. (R.T. 670; 672-  
14 673.) In higher security areas, nurses must leave the clinics and deliver medicine from  
15 tool carts to each cell, with each inmate’s cellmates viewing the entire exchange. (R.T.  
16 672:24-673:20; 680:15-681:11; 682:8-13.) Also at Solano State Prison, inmates stand in  
17 two lines for tuberculosis tests, with one of the lines specifically for those who have  
18 previously tested positive. (R.T. 664:21- 665:10.)

### 19 **3. Overcrowding makes it difficult to recruit and retain staff.**

20 Plaintiffs’ expert Dr. Craig Haney remarked, “I heard accounts of  
21 overcrowding caused staff shortages and understaffing in virtually every prison that I  
22 visited and with whom I discussed this issue with staff.” (R.T. 310:2-4.) Mental health  
23 clinicians see patients in open stand-up cages, without the privacy deemed standard for  
24 treatment. (R.T. 304:1-3.) One doctor shared an office space with a secretary who  
25 witnessed all exams including hemorrhoid screenings. (R.T. 663:22; 664:6-16.) Entire  
26 housing units with over two hundred inmates are staffed by just two correctional officers.  
27 (R.T. 1932:4-15.) State prison staff must work forced overtime shifts without meal breaks  
28 or prior notice, emotionally impacting nurses’ ability to do their jobs and causing

1 correctional officers to drink pots of coffee daily to remain alert. (R.T. 674:1-6; 701:24-  
2 702:9.) Only in the last eight months has there been major progress in filling mental  
3 health care vacancies. (R.T. 847:8-12.) Under these conditions, challenges in recruiting  
4 or retention are not surprising.

5 **4. Overcrowding damages the State’s ability to house inmates**  
6 **in medically appropriate settings.**

7 **a. Crowded reception centers frequently misclassify**  
8 **inmates.**

9 The head of the Pennsylvania Department of Corrections, Dr. Jeff Beard  
10 testified about inmate reception centers:

11 When you have such huge numbers coming into the system and  
12 staying for, in some cases, relatively short periods of time, you  
13 don’t have the capacity to identify people who have mental health  
14 problems and then to properly slot those people where they need to  
15 go. And you may miss people who have medical problems.  
16 Because of this huge throughput that’s coming in, you may miss  
17 people who have certain needs and certain care needs that aren’t  
18 being dealt with.

19 (R.T. 225:4-15.)

20 For example, some inmates take medication that makes them prone to seizures  
21 in the heat. (R.T. 700:10-12.) Those prisoners should not be sent to the warmer  
22 institutions located in the desert. (R.T. 713:6-7.) Yet, at one desert institution, there is a  
23 housing unit designed specifically for people taking these medications, suggesting that  
24 inmates are misclassified into this prison with some regularity. (R.T. 711:1-7.) Inmates  
25 may have to wait months to transfer from that prison to a facility with lower temperatures.  
26 (R.T. 713:6-22.)

27 Overcrowding prevents policy changes from having meaningful effect. For  
28 example, inmates on suicide watch often wait overnight in stand-up cages for a crisis bed.  
A new policy limited the allowable time in a cage to four hours. Because of  
overcrowding, this new policy does not shorten the time that an inmate waits for a crisis  
bed. (R.T. 576:1-25.) Staff simply “change[s] the guy in the cage to the waiting room,



