

# EXHIBIT A

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

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

ORDER

On Saturday, April 4, 2020, the Three Judge Court, convened in this action and in *Plata v. Newsom*, Case No. 01-cv-1351 JST (N.D. Cal.), denied an emergency motion bought by plaintiffs in both cases to modify the prison population reduction order previously issued by that court, in response to the current coronavirus pandemic. ECF No. 6574. The Three Judge Court’s order was without prejudice to the right of each plaintiff class to seek “relief in a procedurally appropriate forum, including the individual *Coleman* and/or *Plata* courts.” ECF No. 6574 at 2. In a concurring opinion as a member of that court, the undersigned noted that “expedited proceedings” to “immediately exhaust the possibility of inmate transfers and relocations to secure facilities to achieve constitutionally acceptable conditions for the Plaintiff classes” remained available before the individual district courts. ECF No. 6574 at 15 (Mueller, Chief District Judge, concurring). In this court, a third status on the impact of the coronavirus pandemic on the *Coleman* class is set for this Friday. See ECF No. 6571.

1           Since the Three Judge Court issued its order, four more inmates have tested  
2 positive for COVID-19, for a total of seventeen. *See id.* at 2; *see also* Cal. Dep't of Corr. &  
3 Rehab., *Population COVID-19 Tracking*<sup>1</sup>(last visited Apr. 6, 2020). This number has more than  
4 doubled since late last week. The Special Master has informed the court that at least one of the  
5 persons infected is a *Coleman* class member. Moreover, a total of fifty-three correctional staff  
6 have self-reported as positive for the virus. Cal. Dep't of Corr. & Rehab., *Population COVID-19*  
7 *Tracking*<sup>2</sup> (last visited Apr. 6, 2020). Again the Special Master has informed this court that at  
8 least one such staff member conducted a group session for *Coleman* class members in March  
9 2020.

10           In light of the growing numbers of infected CDCR inmates and staff members, the  
11 exigent circumstances of which this court is aware appear to require immediate steps to safeguard  
12 the constitutional rights of the plaintiff class. At this point, this court has no indication that  
13 defendants are taking the immediate steps called for at this time. So that the court may by the  
14 time of the upcoming status conference make a reasoned assessment of the current circumstances  
15 in light of the applicable law, the parties shall by 12 noon on April 8, 2020, file simultaneous  
16 briefing, limited to ten pages each, addressing the following:

17           1. In light of the coronavirus pandemic, what are the constitutional minima  
18 required for physical safety for *Coleman* class members? Is six feet of physical distancing  
19 required by the Constitution? If not, why not and what is required?

20           2. Assuming some level of physical distancing is required by the Constitution,  
21 what additional steps, if any, must be taken to ensure that defendants continue to deliver to  
22 *Coleman* class members at a minimum the level of mental health care that has thus far been  
23 achieved in the ongoing remedial process in this case, focused on achieving the delivery of  
24 constitutionally adequate mental health care to the plaintiff class?

25 /////  
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27 <sup>1</sup> *See* <https://www.cdcr.ca.gov/covid19/population-status-tracking/>.

28 <sup>2</sup> *See* <https://www.cdcr.ca.gov/covid19/cdcr-cchcs-covid-19-status/>.

1                   Additionally, defendants shall provide the following information to the Special  
2 Master and the plaintiffs immediately, and in any event not later than 5:00 p.m. on April 7, 2020,  
3 in the form of expedited discovery, subject to existing protective orders:

4                   1. The number of *Coleman* class members by institution and mental health level  
5 of care (CCCMS, EOP, MHCB, and inpatient care); a description of the housing space for each  
6 level of care at each institution (i.e., double cell, single cell, dormitory), with sufficient  
7 information to allow calculation of the physical distancing currently possible for each set of class  
8 members at each institution and level of care, along with information on the physical distancing  
9 currently being achieved; and a list identifying by name and housing location all *Coleman* class  
10 members with at least one COVID-19 risk factor.

11                   2. Defendants' specific plan to achieve by the end of this week a defined level of  
12 physical distancing for any *Coleman* class member currently residing in housing space that does  
13 not allow six feet of physical distancing between inmates, including but not limited to concrete  
14 information on any plans to temporarily relocate such class members to off-site secure facilities.

15                   The parties shall meet and confer by 5:00 p.m. on April 8, 2020 regarding the  
16 information provided by defendants and file a joint report with the court no later than 12:00 noon  
17 on April 9, 2020 concerning the adequacy of defendants' plan to achieve greater physical  
18 distancing for members of the plaintiff class.

19                   IT IS SO ORDERED.

20                   DATED: April 6, 2020.

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24 CHIEF UNITED STATES DISTRICT JUDGE  
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# EXHIBIT B

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

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

ORDER

As required by court order, this matter came on for further telephonic status conference on April 10, 2020, for further updates on defendants’ response to the coronavirus pandemic and its impact on *Coleman* class members. The court has reviewed the parties’ responses to its April 3, 2020 order to show cause, ECF No. 6572, and its April 6, 2020 order, ECF No. 6580. It has also considered updates from the Special Master and the positions of the parties expressed at the April 10, 2020 status conference. Good cause appearing, the court orders as follows.

I. HOUSING AND PROGRAMMING FOR COLEMAN CLASS MEMBERS

The court raised two questions in its April 6, 2020 order, focused on constitutional requirements for safe housing of *Coleman* class members and ongoing delivery of mental health care during the coronavirus pandemic. *See* ECF No. 6580 at 2. In their response to that order, defendants represent they have a number of different plans in varying stages of development and implementation, *see* ECF No. 6596 at, *e.g.*, 1 (“plan to achieve a defined level of physical distancing”), 2 (“multi-faceted plan to prevent the introduction of COVID-19 at CDCR facilities

1 encompassing physical distancing, population density reduction measures, modified programs,  
2 inmate education, increased hygiene, and staff screening, among other things”), 5 (“accelerated  
3 release plan”), 6 (plans to transfer inmates from dormitories to vacant buildings and cells) and 8  
4 (“creating specialized mental health plans for class members according to their case factors”).  
5 Nonetheless, when pressed, defendants took the position at hearing they would not be able to  
6 provide a comprehensive written plan to the court memorializing clear strategic goals and  
7 objectives to guide and prioritize implementation of the many tasks they have undertaken. Their  
8 explanation centered primarily on the constantly evolving circumstances that require flexibility  
9 and adaptation as events and requirements change.

10 The adoption of a strategic plan that sets out specific goals and objectives to be  
11 accomplished by a date certain is not inconsistent with the flexibility defendants require to meet  
12 the significant challenges presented by the coronavirus pandemic. Indeed, such a plan is essential  
13 to protection and preservation of the vital interests at stake in this case. Good cause appearing,  
14 defendants will be directed to file, not later than 5 p.m. on Thursday, April 16, 2020, a strategic  
15 plan for achieving compliance with the U.S. Centers for Disease Control and Prevention (CDC)  
16 Interim Guidance on Management of Coronavirus Disease (2019) (COVID-19) in Correctional  
17 and Detention Facilities (CDC Guidance),<sup>1</sup> to the maximum extent defendants currently maintain  
18 is possible. The plan should include objectives and timelines for defendants’ plans for housing of  
19 *Coleman* class members who are not being granted early release from the California Department  
20 of Corrections and Rehabilitation (CDCR), including those most at risk for COVID-19. It should  
21 also provide for continuity of mental health care, including access to clinically indicated levels of  
22 mental health care and attendant programming as outlined in the Program Guide. Defendants  
23 shall attach as an addendum to the plan a two-column chart that includes in one column each step  
24 the CDC Guidance recommends and in the corresponding column whether defendants have  
25 planned for and/or implemented that step and, if so, where in the plan that step is discussed. The

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27 <sup>1</sup> See [https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html)  
28 [correctional-detention.html](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html). The court notes that the first section of the CDC Guidance is  
Operational Preparedness.

1 defendants shall prepare the plan in consultation with the Special Master, so he is aware of its  
2 provisions as the plan is being developed.

3 The court acknowledges defendants' counsel statement at hearing that defendants must  
4 take account of steps the *Plata* Receiver is taking in managing his duties with respect to the  
5 provision of health care within CDCR during the coronavirus pandemic. Even so, defendants are  
6 not relieved of their obligations to *Coleman* class members. This court agrees that coordination  
7 between the *Coleman* and *Plata* cases is desirable to the extent required given the task at hand.  
8 The court is aware that a representative of the Receiver's office has been invited to attend and has  
9 been present at almost every meeting of the coronavirus task force convened by the Special  
10 Master at this court's direction. The court assumes the Special Master in his discretion will  
11 continue to include the Receiver's office in meetings and communications as required to ensure  
12 the effectiveness of the coronavirus task force the Special Master continues to convene; the court  
13 hopes and trusts that his efforts at coordination are being reciprocated and that reciprocity and  
14 transparency will be watchwords in the defendants' development of the plan required by this  
15 order.

16 II. DEPARTMENT OF STATE HOSPITAL (DSH) TRANSFERS

17 *Coleman* class members receive necessary inpatient mental health care at psychiatric  
18 inpatient programs (PIPs) run by CDCR and in programs at two state hospitals operated by DSH,  
19 Atascadero State Hospital and Coalinga State Hospital. During the week of March 16, 2020,  
20 DSH suspended admission of six of the seven categories of patients admitted to state hospitals,  
21 including *Coleman* class members, due to the coronavirus pandemic. See Hendon Decl. ¶¶ 7,  
22 14(f), ECF No. 6590-4. The parties' discussions about the impact of this suspension on the  
23 provision of necessary inpatient mental health care to *Coleman* class members and whether the  
24 suspension can be lifted subject to specific protocols are ongoing, facilitated by the Special  
25 Master, though those discussions may be approaching an impasse.

26 Good cause appearing, plaintiffs will be given an opportunity to conduct limited and  
27 focused written discovery as discussed at hearing concerning the availability of extra space in the  
28 state hospitals, given the circumstances posed by the coronavirus pandemic, to provide the care



1 that is necessary to *Coleman* class members. The discovery authorized by this order shall be  
2 conducted so that it is completed by 5:00 p.m. on Friday, April 17, 2020. If the parties have any  
3 disputes regarding the scope of discovery, they shall immediately notify the courtroom deputy to  
4 request a telephonic hearing before the undersigned.

5 This matter will be set for a focused evidentiary hearing on Tuesday, April 21, 2020  
6 before the undersigned, at which time the court will be prepared to take testimony from Drs.  
7 Warburton and Bick and an expert to be designated by plaintiffs not later than Wednesday, April  
8 15, 2020 at 5:00 p.m. The court also will consider any evidence developed during the discovery  
9 authorized by this order.

10 In accordance with the above, IT IS HEREBY ORDERED that:

- 11 1. Defendants shall file the strategic plan required by this order not later than Thursday,  
12 April 16, 2020.
- 13 2. Plaintiffs are authorized to conduct limited expedited discovery as set forth in this  
14 order. Said discovery shall be conducted so that it is completed by 5:00 p.m. on April  
15 17, 2020.
- 16 3. This matter is set for further status conference on Friday, April 17, 2020 at 11:00 a.m.
- 17 4. This matter is set for evidentiary hearing on Tuesday, April 21, 2020 at 10:00 a.m. on  
18 the issue of *Coleman* class member access to DSH hospitals. The court will take  
19 testimony from Dr. Warburton, Dr. Bick, and an expert to be designated by plaintiffs  
20 not later than Wednesday, April 15, 2020 at 5:00 p.m.
- 21 5. Counsel are directed to contact Casey Schultz, Courtroom Deputy, on Monday, April  
22 20, 2020 for information concerning arrangements for the evidentiary hearing, which  
23 will be conducted by telephone or videoconference or a combination of the two.
- 24 6. As the court previously discussed with counsel, the hearing set for April 23, 2020 on  
25 defendants' compliance with, and enforcement of, the court's October 17, 2017  
26 staffing order is vacated pending further order of court.

27 DATED: April 10, 2020.

28   
CHIEF UNITED STATES DISTRICT JUDGE

# EXHIBIT C

**Ashley Kirby**

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**From:** ECF-CAND@cand.uscourts.gov  
**Sent:** Sunday, April 5, 2020 12:42 PM  
**To:** efiling@cand.uscourts.gov  
**Subject:** Activity in Case 4:01-cv-01351-JST Plata et al v. Newsom et al Order

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

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**U.S. District Court**

**California Northern District**

### **Notice of Electronic Filing**

The following transaction was entered on 4/5/2020 at 12:42 PM and filed on 4/5/2020

**Case Name:** Plata et al v. Newsom et al

**Case Number:** [4:01-cv-01351-JST](#)

**Filer:**

**Document Number:** 3262(No document attached)

**Docket Text:**

#### **ORDER SETTING CASE MANAGEMENT CONFERENCE**

**Following the three-judge court's denial of Plaintiffs' motion to modify population reduction order, this Court sets a telephonic status conference on April 6, 2020, at 2:15 p.m., to discuss Defendants' response to the COVID-19 pandemic with the parties and the Receiver. No status statements are required. Not later than 12:00 noon on April 6, 2020, the parties shall email [jstcrd@cand.uscourts.gov](mailto:jstcrd@cand.uscourts.gov) with a call-in number at which all parties can be reached. Signed by Judge Jon S. Tigar on April 5, 2020.**

**(This is a text-only entry generated by the court. There is no document associated with this entry.) (jstlc3, COURT STAFF) (Filed on 4/5/2020)**

**4:01-cv-01351-JST Notice has been electronically mailed to:**

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**4:01-cv-01351-JST Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:**

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# EXHIBIT D

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Civil Minutes

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Date: April 6, 2020

Judge: Jon S. Tigar

Time: 1 hour 6 minutes

Case No. **4:01-cv-01351-JST**

Case Name **Marciano Plata, et. al v. Gavin Newsom, et. al**

Attorneys for Plaintiffs: Donald Specter  
Steven Fama  
Alison Hardy  
Corene Kendrick

Attorneys for Defendants: Paul Mello  
Samantha Wolff  
Nasstaran Ruhparwar  
Damon McClain

Counsel for Intervenors: David Sanders  
Gregg Adams

Receiver: Clark Kelso

Deputy Clerk: Mauriona Lee

Court Reporter: Raynee Mercado

PROCEEDINGS

Further case management conference – held.

RESULT OF HEARING

1. Hearing held telephonically. Defendants’ counsel is to provide information, as identified on the record, to Mr. Specter by April 7, 2020 at 11:00 a.m.
2. A Further Case Management Conference is set for April 10, 2020 at 1:30 p.m. Case management statement due April 10, 2020 by 10:00 a.m.