

MEMORANDUM OF UNDERSTANDING

The Parties in the three-judge panel proceedings convened pursuant to 28 U.S.C. § 3626(a)(3) in the matters of Coleman et al. v. Schwarzenegger, No. CIV-S-90-0520-LKK-JFM-P (E.D. Cal.) and Plata et al. v. Schwarzenegger, No. C01-1351-TEH (N.D. Cal.), have entered into this Memorandum of Understanding (“MOU”) to resolve these two proceedings.

For purposes of this Agreement, the Parties in the three-judge panel proceedings shall include the following:

I. Recitals

WHEREAS Plaintiff-prisoners in the California state prison system have filed the Coleman and Plata suits pertaining to medical care and mental health care provided by the California Department of Corrections and Rehabilitation (“CDCR”);

WHEREAS the Defendants include the Governor, the Director of Finance, the Secretary of the Department of Corrections and Rehabilitation, and the Deputy Director of the Health Care Services Division, and are sued in their official capacities as state officials responsible for the operation of CDCR (collectively, the “State”);

WHEREAS the Plaintiff-prisoners in Plata et al. v. Schwarzenegger, Case No. C01-1351 TEH (N.D. Cal.), and Coleman et al. v. Schwarzenegger, Case No. Civ. CIV-S-90-0520-LKK-JFM-P (E.D. Ca.), filed motions to convene a Three-Judge Panel to consider issuing a prisoner release order pursuant to 18 U.S.C. § 3626(a)(3);

WHEREAS the district courts in Plata and Coleman granted those motions and a Three-Judge Panel was convened to hear the consolidated motions from both district court actions;

WHEREAS the Three-Judge Panel subsequently granted the motions of five groups of Intervenor—the California Correctional Peace Officers Association, a group of California legislators, a group of Counties, a group of District Attorneys, and a group of local law enforcement officers;

WHEREAS the Parties, including Intervenor, have conducted informal negotiations since November 2007 in an effort to resolve Plaintiffs’ motions for a prisoner release order. Those negotiations have been undertaken at arm’s length and in good faith between Plaintiffs’ counsel and high ranking state officials and their counsel;

WHEREAS the Parties and Intervenor have reached agreement on efforts to be undertaken by State and local officials to reduce the prison population housed in CDCR adult facilities; and

WHEREAS nothing in this MOU impairs any obligations of CDCR under any outstanding collective bargaining agreements;

NOW THEREFORE, THE PARTIES AGREE, SUBJECT TO COURT APPROVAL, TO RESOLVE THE THREE-JUDGE PANEL PROCEEDINGS ACCORDING TO THE FOLLOWING TERMS AND CONDITIONS:

II. Statement of Jurisdiction

A. The Consent Order attached to this agreement as Exhibit B satisfies the requirements of 18 U.S.C. § 3626, and the Three-Judge Court has and specifically retains jurisdiction to enforce its terms.

B. The Court shall have the power to enforce the Consent Order through all remedies permitted by law, subject to the limitations otherwise described herein.

III. Terms and Conditions

A. **Enactment of Legislation.** This Agreement and entry of the Consent Order is contingent upon the enactment into law on or before the date that the State budget is adopted or, in any event, by September 15, 2008, of legislation described generally in the legislative proposals set forth in Exhibit A. The Parties agree to the following procedure with respect to the full and complete development of this legislation:

1. **Assessment of Needed Appropriations.** By June 5, 2008, the Parties will submit Exhibit A to a six-person working group consisting of three representatives on behalf of the California Department of Finance and three representatives on behalf of local government (to be selected by the Referee). By June 15, 2008, this working group shall determine the amount of funding, including the size of grants, necessary to implement the local government programs that will be authorized as part of the legislation. In the event this working group cannot reach agreement, the Settlement Referee and his Consultant shall meet with the working group and make a recommendation to the Legislature for the necessary appropriations.

2. **Drafting of Legislation.** The Settlement Referee will designate a working group to prepare in bill form and submit to the Office of Legislative Counsel the legislation required by Exhibit A. The Legislative Counsel shall finalize the draft into a legislative bill that effectuates each of the changes in state law prepared by the parties and described in Exhibit A. The legislative bill shall contain authorization for sufficient appropriations to fund all of the bill's proposals, including appropriations for local government programs at or above the level determined by the working group described in the preceding paragraph.

3. **Submission of Legislation.** As soon as possible following submission of the language to Legislative Counsel, the legislation will be introduced for consideration by the state legislature.

B. **Implementation of Programs.** This Agreement also requires the Parties to implement the programs set forth in this MOU as a means to achieve the required population levels. The State retains the right to revise or eliminate any or all of these programs and implement additional programs in order to achieve the population levels set forth in this MOU. The Parties recognize that the Governor's May Revise proposal continues to include summary

parole as a means to reduce prison overcrowding in a responsible way and to achieve budget savings. Nothing in this MOU affects the Governor and the Legislature from continuing to consider this proposal. Local governments do not waive their rights to maintain programs currently under local jurisdiction.

C. Local Diversionary Alternatives to Incarceration for Low-Risk Individuals

1. **Local Administration.** All programs and sanctions shall be developed and administered at the local level. For those counties and other local entities that opt into this diversion program, these programs will be financed by the State through contractual agreements. In the event that there are insufficient appropriations to fund a program, the county or local entity shall have the option to cease its programs and all participants revert back to the control of the authority that committed those participants (that is, the State for individuals diverted from State prison and the counties for probationers).

2. **Oversight.** Funding and technical support shall be provided by the Corrections Standards Authority (“CSA”), once redesignated by the Legislature as a quasi-independent agency pursuant to the legislation to be enacted pursuant to this MOU. The Authority shall be comprised of 13 members. The members shall include six representatives from the State and six representatives from the local governments. The thirteenth member shall be the CDCR Secretary who shall be the Chair

(A) **Duties.** With respect to this MOU, the CSA shall have the duty to (i) distribute funds for the programs and sanctions outlined in this MOU (which may include incarceration by local jurisdictions) to the local government agencies that administer them; (ii) provide technical support; and (iii) gather data regarding the effectiveness of these programs, including but not limited to the number of local diversions away from state prison as compared to the previous three years.

(B) **Powers.** With respect to this MOU, the CSA shall have the power to:

(i) Distribute one-time “seed money” to local government agencies to enable them to engage in planning activities for the programs they seek to administer. The amount of one-time “seed money” available to the counties shall be developed by the working group described in Section III.A.1. above;

(ii) Review program proposals submitted to the Authority by local governmental agencies for participation in this program. These program proposals shall be based upon those contained in the legislation contemplated in the MOU, and shall address rehabilitation and mental health issues. As part of their proposals, the local governmental agencies shall retain the authority to implement graduated sanctions for violations of their programs’ terms;

(iii) Distribute funds to operate programs, as a combination of (i) a fixed amount per county taking into consideration the county’s population, the number of individuals currently subject to diversion, and the historical efforts and success at diverting

individuals from state prison; (ii) a performance-based adjustment (that may vary annually depending on the diversion of admittees from state prison); and (iii) equitable distribution among the counties. The amount of funds available and the criteria for the distribution of the funds shall be developed by the working group described in Section III.A.1., above;

(iv) Adjust the performance-based portion of the funding according to the success of the local program at diverting admittees from State prison as measured by a decrease in the number of admittees compared with a benchmark based on the average number of admittees over the most recent three-year period. These performance measures shall take into consideration a county's historical efforts and success at diverting individuals from state prison prior to the implementation of the program(s).

(C) **Local Steering Committees.** Each local government shall form a planning committee pursuant to the community corrections act to implement the terms under the MOU and distribute the State funds and report to the CSA.

3. Targeted Populations.

(A) **County Probation Populations.** Individuals eligible to participate are identified by local jurisdictions of those who are already on probation and who commit a new, probation-eligible offense that would otherwise result in revocation of probation and incarceration in state prison.

(B) **State Diversion Population of Lower-Risk Individuals.** Individuals eligible to participate in the diversionary programs implemented under this MOU are those whose offense is eligible for a probationary sentence and who would otherwise serve 12 months or less in prison at the time of sentencing (after accounting for any applicable reduction in sentence due to anticipated behavior credits). For these individuals, their diversionary sentences shall constitute a prior prison term under Penal Code 667.5 as amended by legislation provided for by this MOU.

4. **Narrow Judicial Discretion To Deny Participation.** An individual who is eligible to participate in a diversionary program (as defined above) is not automatically entitled to such participation. Instead, the judicial authority imposing sentence may in unusual cases where necessary for public safety state, on the record, that a particular individual should not participate notwithstanding eligibility. The number of judicial overrides shall be tracked by CSA on a county-by-county basis, to be used by the CSA, the Prison Population Advisory Committee ("PPAC") and the Secretary of the Department of Corrections and Rehabilitation in assessing which tools should be used to ensure compliance with the population levels, as set forth in Part IV, below.

5. **Oversight of Individuals Selected for Diversion.** Although the local government personnel overseeing a diversionary program will monitor the diverted individuals insofar as the program is concerned, the jurisdiction over those individuals (including revocation from participation in a diversionary program for violations of that program's terms) remains with the authority that committed the individual. The State shall have jurisdiction over individuals

participating in diversion programs pursuant to Section III.C.3.B as parolees. The local governments shall have jurisdiction over probationers.

D. Alternative Sanctions For Lower-Level Parole Violators. The parolees eligible for the alternative sanctions shall be identified as follows:

1. **Decision-Making Instrument.** Parole agents shall use a decision-making instrument that evaluates parolees along two criteria: (i) severity of the parole violation; and (ii) the parolee's risk level as a threat to public safety.

(A) **Severity.** The severity of a particular parole violation shall be determined based on a scoring system developed by CDCR in which the violation shall be placed in one of three categories of severity—low, medium, or high.

(B) **Risk.** The risk posed by a particular parolee shall be assessed using the California Static Risk Assessment Tool being developed by the California Department of Corrections and Rehabilitation in conjunction with the Center for Evidence-Based Corrections at the University of California at Irvine. The Prison Population Advisory Committee (described later in this MOU) shall meet at least annually to discuss the use of the California Static Risk Assessment Tool and to recommend improvements to the tool or its use.

2. **Eligibility for Alternative Sanctions.** The individuals eligible for alternative sanctions shall be identified through use of the Decision-Making Instrument. Parolees determined to be eligible for alternative sanctions by this Instrument shall not be automatically referred to the State Board of Parole Hearings for revocation or other sanction.

3. **Override Authority.** Notwithstanding a particular parolee's eligibility or ineligibility for alternative sanctions, parole officers shall have the authority to override a determination in exceptional circumstances if, in the exercise of his or her discretion, such sanctions would be inappropriate for a parolee. In making this determination, a parole officer may use any data appropriate in assessing risk and severity, including the Static-99 assessment tool for parolees who are sex offenders. To effectuate an override, the parole officer must record the reasons for the override determination. If a CDCR official other than the assigned parole officer overrides the assigned parole officer's decision, that person must confer with the parole officer regarding the decision and record the results in the parolee's case or central file .

4. **Quality Assurance Review of Override Decisions.** The CDCR shall perform a quality assurance review to ensure that override decisions are being exercised appropriately.

E. Earned Credits for Inmates

1. **Revisions to Credits.**

(A) **Establishment of Credits for Rehabilitative Programs.**

(1) **Use of "Block Credits."** Inmates who accomplished specified rehabilitative goals will receive a "block credit" relative to that accomplishment, which

will range in days depending upon the amount of time expected to earn that credit. The percent of the credit inmates receive will depend on their credit-earning status. For example, an inmate who is eligible to receive 50% credits will receive 50% of the credit available for that rehabilitative accomplishment.

(2) **Eligible Programs.** Program credits will be available for completing specific program accomplishments, including but not limited to, the following programs:

- Completion of Adult Basic Education I
- Completion of Adult Basic Education II
- Completion of Adult Basic Education III
- Passing each of the 5 GED sub-tests (Reading Comprehension, Social Studies, Mathematics, Science, and U.S. History)
- Completion of each of the 11 components required for a high school diploma.
- Completion of college credits
- Completion of vocational modulars
- Achievement of vocational training certifications
- Completion of evidence-based criminogenic programs
- Compliance with all aspects of rehabilitation and treatment case management plans

CDCR will continue to modify and update the list of program accomplishments eligible for “block credits” as new program opportunities are developed.

(3) **Calculation of “Time to Serve.”** Program credits are not to be included in the initial calculation of an inmates “time to serve” and will not be assumed or applied to an inmate’s sentence until after the inmate has completed the specified program accomplishment.

(B) Credits for Good Behavior

(1) **Retention of Prior Credit-Earning Status Rubric.** Inmates will continue to earn behavior credits (and, by extension, rehabilitative program credits) according to one of several classifications (i.e., 50%, 20% or 15%).

(2) **Replacement of “Bridging Program” With A “Yours To Lose” System.** The State will establish a statutory “Yours to Lose” credits system linked to actual behavior and subject to temporary or permanent forfeiture should an inmate violate behavior rules set forth by CDCR. If an inmate receives a “disciplinary action” (i.e., a “serious” rule violation), CDCR regulations will specify whether the inmate is to lose credits and whether the inmate can earn back lost credits (i) after a specific period of discipline-free time or (ii) after the inmate has demonstrated an ability to remain discipline-free for a period of time, as determined by the inmate’s classification committee.

(3) **Commencement of Earning Status.** Inmates will begin to earn behavior credits upon conviction (either by plea or by trial), whether or not they are housed in State or local facilities.

(4) **New Credit Earning Status for Community Crews.** Credit-earning status will be increased to 2:1 for inmates placed on community crews (in addition to those in fire camps). These inmates (community crews and fire camps) will be eligible for 2:1 credits beginning at the time of training.

2. Applicability of Revisions to Credit System

(A) **Election to Participate in New System.** Upon enactment of this new system, every inmate will be provided a waiver to enroll in the new system as part of their annual review. If an inmate decides to enroll in the new system, the inmate will receive any credits earned through the previous system up until the effective date of the new system.

(B) **Consideration of Retroactive Application.** CDCR will also consider whether to accord inmates "block credits" retroactively.

3. **Annual Review and Evaluation.** CDCR will conduct a review at least annually of the application and impact of behavior and program credits to determine whether changes are necessary to provide the incentives for good behavior and program participation.

IV. Compliance with CDCR Population Levels.

A. **Defining Population Levels.** The population levels shall be referenced as a percentage of the design capacity of each CDCR adult institution and of the CDCR in-state prison system as a whole.

1. **Setting the Population Levels.** The population levels shall be referenced as a percentage of the design capacity of each CDCR adult institution and of the CDCR in-state prison system as a whole.

(A) **Initial Statewide Population Level.** For purposes of this Agreement, the initial Statewide Population Level is 158% of design capacity. As of the date of this Agreement, this percentage equates to 132,500 inmates in the 33 existing CDCR adult institutions.

(B) **Permanent Statewide Population Level.**

(i) **Process to Determine Permanent Statewide Population Level.** The Parties agree that there shall be a permanent Statewide Population Level. The permanent Statewide Population Level shall be a percentage of design capacity calculated by dividing the sum of the maximum population levels at the 33 existing CDCR adult institutions by the sum of the design capacity of the 33 existing CDCR adult institutions. Subject to the conditions and procedures in subdivisions (iii) and (iv) below, these permanent levels shall be

determined after consultation with an advisory group that, on a one-time basis, shall provide recommendations on the maximum population level at each of the CDCR adult institutions.

(ii) **Advisory Group.** The advisory group shall consist of: (i) one representative and one expert for the Plaintiffs; (ii) one representative and one expert for the State; (iii) Fresno City Chief of Police Jerry Dyer; (iv) Los Angeles County Assistant Sheriff Marvin Cavanaugh; and (v) any further experts agreed to by the Plaintiffs and the State. In assessing the maximum population levels for each CDCR adult institution, the advisory group shall consider the mission of a facility and constitutionally adequate medical and mental health care so the inmates are not subject to substantial risk to their health and safety. In making these determinations, the advisory group may make requests for information from the Special Master in Coleman et al. v. Schwarzenegger, No. CIV-S-90-0520-LKK-JFM-P (E.D. Cal.) and the Receiver in Plata et al. v. Schwarzenegger, No. C01-1351-TEH (N.D. Cal.), each of whom shall cooperate with those requests to the extent permitted by law. The advisory group shall provide its recommendations by June 27, 2008.

(iii) **Population Level Outside of 10% of Initial Statewide Population Level.** If the Statewide Population Level recommended by the advisory group is outside the range of the initial Statewide Population Level by more than 10% (that is, if the Statewide Population Level is less than 129,850 or is greater than 135,150), either the Plaintiffs or the State may opt out of this MOU by July 7, 2008.

(iv) **Population Level Within 10% of Initial Statewide Population Level.** If the recommended population levels for all of the CDCR institutions are lower or higher than the initial Statewide Population Level, then the State and Plaintiffs shall meet and confer regarding an appropriate Statewide Population Level, including modifying the interim population levels to avoid the imposition of additional population reduction measures to maintain compliance and adjusting applicable timeframes. The State and Plaintiffs shall also meet and confer regarding an appropriate population level for each of the 33 CDCR adult institutions. If the State and Plaintiffs cannot reach agreement on an appropriate population level for one or more of the CDCR adult institutions, then either party may seek modification of the specific CDCR adult institution(s) from the Three-Judge Panel, as long as the requested modifications are within 10% of the initial Statewide Population Level.

2. **State's Right to Increase Capacity.** Nothing in this Agreement shall restrict the State's authority or ability to construct additional State prison capacity. The Parties recognize the unique role of the judges in the Plata case, the Coleman case and the Three-Judge Panel proceedings to assist the State in its efforts to reduce prison overcrowding, while also considering the effect of increased capacity on the State's ability to provide constitutional adequate medical and mental health care. The State, in consultation with the Receiver in Plata and Special Master in Coleman, may increase capacity without leave from any party or the Three-Judge Panel. However, the State and Plaintiffs retain their existing rights to challenge any decision of the Receiver or Special Master before their respective single district court judge.

3. **Adjustments Based on Changed Circumstances.** Based on a significant change in circumstances, the State and the Plaintiffs may obtain an assessment from the advisory group described in subdivision IV.A.1.B of this MOU of the maximum population level for a

specific CDCR adult institution. The State and Plaintiffs shall then meet and confer. If the State and Plaintiffs cannot reach agreement, then either party may seek modification of the disputed population level from the Three-Judge Panel.

4. **Emergency Situation.** The Parties recognize that the State may have to temporarily increase population levels at one or more CDCR adult institutions to address an emergency situation to mitigate substantial risk to the health and safety of the inmates and staff. Such temporary increases due to an emergency situation shall not be used to demonstrate noncompliance with any of the population levels contained in this MOU. For purposes of this paragraph, emergency situations include such conditions as riot, urgent repair, disease, epidemic, earthquake, fire, storm, flood, sewage spill, or other types of emergencies that threaten the health and safety of inmates and staff.

B. **Preliminary Interim Population Levels.** Set forth below are preliminary interim population levels designed to make progress towards reaching the Statewide Population Level by September 15, 2012. In particular, the State shall (on a both a system-wide and a per-facility basis) reduce the “gap” between the established Population Level and the population of adult inmates currently housed in CDCR adult institutions (which the Parties have stipulated is 158,931) by the following percentages by the following dates:

1. **First Interim Level.** By September 15, 2009, the State shall reduce the “gap” by 10%;

2. **Second Interim Level.** By September 15, 2010, the State shall reduce the “gap” by an additional 20% (for a cumulative total reduction of 30%); and

3. **Third Interim Level.** By September 15, 2011, the State shall reduce the “gap” by an additional 20% (for a cumulative total reduction of 50%).

C. **Prison Population Advisory Committee.** There shall be a Prison Population Advisory Committee (“PPAC”) established by the State.

1. **Composition of the Prison Population Advisory Committee.** The PPAC shall consist of the following representatives: (i) one representative from the California Department of Corrections and Rehabilitation; (ii) one technical expert agreed upon by Plaintiffs and the State; (iii) one academic expert agreed upon by Plaintiffs and the State; (iv) one designee of the Plaintiffs; (v) one representative from the California State Sheriffs’ Association; (vi) one representative from the California Police Chiefs Association; (vii) one representative of the California District Attorneys Association; (viii) one representative from the California Public Defenders Association; (ix) one representative of the Chief Probation Officers of California; (x) one representative of the California League of Cities; (xi) one representative of the County Supervisors Association of California; (xii) the Sheriff from the county that sent the most new admissions to the CDCR in the previous 12 months; (xiii) one representative for victims’ rights, to be selected from a slate nominated and elected by the members of the PPAC; (xiv) one designee of the California Judicial Council; and (xv) the Secretary of the Department of Corrections and Rehabilitation or a designee. The Secretary or the Secretary’s designee shall be the Chair of the PPAC. The member-representatives of the PPAC shall be selected no later than

September 30, 2008. If the State and the Plaintiffs are unable to agree upon particular individuals to serve on the PPAC, the Referee will select those individuals.

2. Duties of the Prison Population Advisory Committee.

(A) **Monitoring and Advice.** The PPAC shall meet every six months to review the progress of the State in meeting the Population Levels set forth above and advise the State on operational issues that affect compliance with the Population Levels, and make recommendations on how to achieve compliance.

(B) **Consideration of Options If Population Exceeds Population Levels.** If the CDCR Secretary or PPAC believes that the Population Levels will be exceeded after the expiration of the Safe Harbor period, the PPAC shall recommend options to achieve compliance as necessary to each population level, including but not limited to:

(i) **Emergency Legislation To Increase Capacity.**
Emergency Legislation to increase capacity.

(ii) **Expanding Eligible Pool for Diversion.** Extend the threshold for local diversion to individuals who would otherwise serve 24 months or less in prison at the time of sentencing (after accounting for any applicable reduction in sentence due to behavior credits).

(iii) **Increasing Credits.** CDCR shall increase credits, as determined by the Secretary.

(iv) **Additional Diversion By Counties.** CDCR shall inform each county of its proportionate share of the necessary population reduction. Each counties' share shall be determined by taking into account the number of offenders that have been diverted from state prison pursuant to the reform measures set forth herein. Each county must determine whether to divert the additional offenders or accept additional inmates to be released to the county from a list of all inmates determined to be eligible for release for each county by the Secretary. A county that accepts additional inmates has the discretion whether to incarcerate them locally at its own expense or to release them into the community with any lawful conditions it wishes to place on their release. If a county fails to choose, then PPAC shall make a recommendation to the CDCR Secretary on the additional inmates to be released to each county, determined based on the county of conviction.

3. Secretary's Authority After Considering PPAC's Recommendations. After considering the recommendations of the PPAC, the Secretary shall, pursuant to state law, take adequate action(s) to reduce the population to the required level. If the PPAC's recommendations are not implemented or are not effective to reduce the population levels, the Secretary shall release inmates based on the shortest time left to serve in order to comply with the population levels contained herein.

D. Safe Harbor Provision. No relief shall be requested or granted to enforce population levels set forth above unless a prison population level has been exceeded for 120 consecutive calendar days. During the 120 consecutive calendar days, the State shall convene

and consult with the PPAC to identify potential solutions to reach compliance with the applicable Interim or Population Level. The PPAC shall make recommendations to the State for achieving such compliance.

V. Other Litigation

A. Limitations on Future Lawsuits. With the exception of the Plaintiffs' right to seek individual relief in cases involving the award of credits, the Parties and Intervenors agree not to file any additional litigation challenging the State's implementation of the reforms contained in Parts III.C, III.D, or III.E of this MOU, or any other reforms implemented by the State to comply with the population level requirements of this MOU, including any provision contained in the legislation enacted pursuant to this MOU.

B. Joint Action If Implementation of MOU Halted By Court Order. If implementation of any reforms contained in this MOU or any other reforms implemented by the State to comply with the population level requirements of this MOU, including any provision contained in the legislation enacted pursuant to this MOU, is prohibited or significantly delayed by a court order, then the State and Plaintiffs will jointly seek relief from the appropriate court to allow the affected reforms to be effective. With regard to any of the State's actions to increase capacity, Plaintiffs will not oppose the State's efforts to seek relief from the appropriate court to allow the capacity increase to proceed.

C. Existing Litigation.

VI. Settlement Referee. The Settlement Referee Justice Elwood Lui and the Settlement Referee's Consultant Justice Peter Siggins shall continue to be available to assist the Parties in resolving any disagreements regarding the meaning of the MOU.

VII. Termination.

A. Standards for Terminating MOU, Consent Decree, and Jurisdiction of Three-Judge Panel. Notwithstanding the Prison Litigation Reform Act or any other law, upon motion of the State, the Three-Judge Panel must terminate its Order enforcing this MOU and its jurisdiction over this matter if the State has complied with the Statewide Population Level as set forth in this MOU for a period of 365 consecutive calendar days.

B. Measuring Compliance with Population Caps. In determining compliance, the Three-Judge Panel shall consider the average statewide population level during the applicable 365-day period, as well as the average population level at each of the CDCR adult institutions during the same period. For purposes of undertaking this analysis, the State is not out of compliance with the population level fixed for a particular facility unless it exceeds that level by 15%.

VIII. Dismissal of Intervenors. Upon the entry of the order approving this Agreement, the intervenors agree to dismiss their petitions for intervention without prejudice.

IX. Attorney's Fees.

EXHIBIT A: LEGISLATIVE PACKAGE

The Parties in the three-judge panel matter convened pursuant to 28 U.S.C. § 3626(a)(3) arising out of Coleman et al. v. Schwarzenegger, No. CIV-S-90-0520-LKK-JFM-P (E.D. Cal.) and Plata et al. v. Schwarzenegger, No. C01-1351-TEH (N.D. Cal.), have entered into an Agreement to resolve issues before the three-judge panel. As part of that Agreement, the Parties have agreed to seek enactment of legislation that effectuates the following legislative proposals:

Proposal No. 1: Amend Penal Code § 667.5 to specify that placement in a non-custodial diversionary program in lieu of state incarceration qualifies as a term in state prison for purposes of sentencing enhancement.

Proposal No. 2: Measures intended to provide funding and streamline implementation of AB 900 and duty of State to use “best efforts” to increase population capacity, including: (i) authority for integrated project delivery; (ii) authority for expedited contracting procedures; (iii) shortened timelines for the CEQA process; (iv) flexibility on project scope (number and types of beds) for Phase I; and (v) changes necessary to facilitate a clean opinion on AB 900 bonds.

Proposal No. 3: Require the counties to divert qualified persons to properly approved local-level programs for individuals with 12 months or less to serve in state prison from the time of commitment.

Proposal No. 4: Amend Penal Code to provide that CDCR shall use alternative sanctions for parole violators based on a decision-making instrument.

Proposal No. 5: Eliminate mandatory referrals to the Board of Parole for all parole violations.

Proposal No. 6: Authorize funding for diversionary programs contained in Memorandum of Understanding, at levels at or above those recommended by working group evaluating funding requirements.

Proposal No. 7: Update and fund the Community-Based Corrections Act of 1994, as necessary to facilitate the implementation of this MOU.

Proposal No. 8: Enhance the authority of the Secretary of the Department of Corrections and Rehabilitation to ease systemic population pressures through transfer prisoners to out-of-state public or private facilities, and take other actions necessary to comply with the population levels recommended by the Prison Population Advisory Committee.

Proposal No. 9: Reclassify the Corrections Standard Authority as an independent board, separate from the Department of Corrections and Rehabilitation.

ORDER

It is anticipated a court order will contain recitals required to comply with the Prison Litigation Reform Act, Population Level Provisions, Enforcement Provisions, a Termination Clause, Attorneys Fees Provision, a provision restricting the parties ability to bring other litigation based upon the same claims as in this case, and dismissal of intervenors without prejudice. The exact language of an order will be crafted to reflect the elements of the MOU that will be subject to federal court enforcement.