

No. 13-198

---

In the  
**Supreme Court of the United States**

---

GOVERNOR EDMUND G. BROWN JR., *et al.*,  
*Appellants,*

v.

MARCIANO PLATA AND RALPH COLEMAN, *et al.*,  
*Appellees.*

---

**Appeals from the United States District Courts  
for the Eastern District of California and  
the Northern District of California**

---

**JOINT SECOND SUPPLEMENTAL BRIEF**

---

DONALD SPECTER <i>Counsel of Record</i>	PAUL D. CLEMENT <i>Counsel of Record</i>
STEVEN FAMA	ZACHARY D. TRIPP
ALISON HARDY	MICHAEL H. MCGINLEY
SARA NORMAN	BANCROFT PLLC
REBEKAH EVENSON	1919 M Street NW
PRISON LAW OFFICE	Suite 470
1917 Fifth Street	Washington, DC 20036
Berkeley, CA 94710	(202) 234-0090
(510) 280-2621	<a href="mailto:pclement@bancroftpllc.com">pclement@bancroftpllc.com</a>
<a href="mailto:dspecter@prisonlaw.com">dspecter@prisonlaw.com</a>	

Counsel for the *Plata*                   Counsel for the *Coleman*  
Appellees   Appellees  
*(Additional Counsel Listed on Inside Cover)*

September 27, 2013

---

MICHAEL W. BIEN  
JANE E. KAHN  
ERNEST GALVAN  
LISA ELLS  
AARON J. FISCHER  
KRISTA STONE-MANISTA  
MARGOT MENDELSON  
LORI RIFKIN  
ROSEN BIEN GALVAN &  
GRUNFELD LLP  
315 Montgomery Street  
Tenth Floor  
San Francisco, CA 94104  
(415) 433-6830

Additional Counsel for *Coleman* Appellees

## **SECOND SUPPLEMENTAL BRIEF**

Pursuant to Supreme Court Rule 18.10, Appellees respectfully submit this supplemental brief to address the three-judge district court's September 24, 2013 Order to Meet and Confer. *See* Appellants' Supp. App. 1–3. Although that order is of extremely limited relevance to this appeal from orders entered months earlier, this supplemental brief is necessary to correct Appellants' mischaracterization of this recent order in Appellants' supplemental brief.

Consistent with S.B. 105, Appellants moved for a three-year extension to allow them to implement a durable remedy while avoiding spending hundreds of millions of dollars on contracts for out-of-state beds. Appellants' Supp. App. 2. Appellants warned that, absent an extension, S.B. 105 would require them to send additional prisoners out of state by September 30, 2013, thereby depleting much of the funding potentially available for a more durable remedy. *Id.* The three-judge court responded by granting an extension to January 27, 2014, and ordering the parties to "meet and confer" to explore in more detail "how defendants can comply" and achieve "a durable solution." *Id.* The order requires a mediator's report no later than October 21, 2013 on the status of negotiations, and earlier if the mediator determines that further discussions would be unproductive. *Id.* And to ameliorate Appellants' concern that S.B. 105 required them to lease out-of-state beds by September 30, the three-judge court ordered that they not do so "[d]uring the meet-and-confer process and until further order of the Court." *Id.* at 3.

Appellants now complain that this order is an “*ultra vires* injunction” where “the court imposed its policy preferences for how to reduce prison crowding.” Appellants’ Supp. Br. 1. This is absurd. The order gave Appellants two things they asked for: (1) more time to comply; and (2) a reprieve from S.B. 105’s mandate that they lease out-of-state beds. If any “policy preference” is at work, it is Appellants’ own preference, expressed in S.B. 105, for “long-term solutions” to overcrowding, rather than leasing more out-of-state beds. S.B. 105 § 1, Supp. Br. App. 1. The order merely maintains the status quo regarding out-of-state beds during a brief meet-and-confer process that gives Appellants a chance to shape a settlement in line with their preferences.

The order and Appellants’ overblown reaction also further show that this Court should dismiss or summarily affirm. Appellants’ assertion that this is “yet another injunction” underscores the wisdom of Congress’ decision *not* to give this Court mandatory jurisdiction over orders modifying injunctions this Court has previously affirmed. An extension of time to meet and confer does not remotely justify an expenditure of this Court’s resources, but under Appellants’ view they would have the right to insist on this Court’s review. The order also disproves Appellants’ claims that the three-judge court is unwilling to modify the population reduction order when appropriate. If the three-judge court were unwilling to consider modifications under Rule 65 of the Federal Rules of Civil Procedure, it would have simply denied Appellants’ motion for an extension. Finally, the three-judge court’s order underscores

that the current appeal is interlocutory. A meet-and-confer process is now underway in the three-judge court. If it is successful at least in part, it could lead to a modification of the current order.

\* \* \*

For the reasons set forth above and in Appellees' Joint Supplemental Brief and Motion to Dismiss or Affirm, this Court should dismiss the appeal or summarily affirm the decisions below.

Respectfully submitted,

DONALD SPECTER  
*Counsel of Record*  
STEVEN FAMA  
ALISON HARDY  
SARA NORMAN  
REBEKAH EVENSON  
PRISON LAW OFFICE  
1917 Fifth Street  
Berkeley, CA 94710  
(510) 280-2621  
dspecter@prisonlaw.com

Counsel for the *Plata*  
Appellees

PAUL D. CLEMENT  
*Counsel of Record*  
ZACHARY D. TRIPP  
MICHAEL H. McGINLEY  
BANCROFT PLLC  
1919 M Street NW  
Suite 470  
Washington, DC 20036  
(202) 234-0090  
pclement@bancroftpllc.com

MICHAEL W. BIEN  
JANE E. KAHN  
ERNEST GALVAN  
LISA ELLS  
AARON J. FISCHER  
KRISTA STONE-MANISTA  
MARGOT MENDELSON  
LORI RIFKIN  
ROSEN BIEN GALVAN &  
GRUNFELD LLP  
315 Montgomery Street  
Tenth Floor  
San Francisco, CA 94104  
(415) 433-6830

Counsel for the *Coleman*  
Appellees

September 27, 2013