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11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 13 EASTERN DIVISION – RIVERSIDE

14 QUINTON GRAY, et al., on behalf of
 15 themselves and all others similarly
 16 situated,

17 Plaintiffs,

18 v.

19 COUNTY OF RIVERSIDE,
 20 Defendant.

Case No. EDCV13-0444 VAP (OP)

CLASS ACTION

**PLAINTIFFS’ REPLY IN SUPPORT
OF EMERGENCY MOTION TO
ENFORCE CONSENT DECREE**

Judge: Hon. Virginia A. Phillips

Date: To be determined

Time: To be determined

Courtroom: Telephonic

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INTRODUCTION

Plaintiffs filed a motion to enforce the Consent Decree by requiring the County to submit a plan to implement essential COVID-19 preparation measures: physical distancing and fundamental hygiene precautions. In response, Defendant submits a plan that falls far short of the standard of care as described by the Court’s experts and the Centers for Disease Control and Prevention (CDC). Defendant concedes that “the spread of COVID-19 is best addressed through physical distancing and heightened cleanliness,” Def’s Opp. to Pltfs’ Emergency Motion, April 10, 2020, ECF No. 183 (Opp.), at 13, and does not dispute that a large number of people in the Riverside jails live in crowded dorms with serious sanitation problems. Nonetheless, Defendant’s COVID-19 plan lacks adequate measures to address these essential points. The Court should therefore order Defendant to come up with a revised plan that addresses these deficiencies.

Plaintiffs’ motion further seeks enforcement of the Consent Decree provision guaranteeing Plaintiffs ready access to relevant information to monitor Defendant’s implementation of constitutionally adequate healthcare. Even the Opposition fails to provide crucial information Plaintiffs have been seeking for several weeks, such as how many people live in dorms, how close are their beds, and how many quarantine and isolation cells are available.

The paucity of information and inadequacy of the plan to address the experts’ and CDC’s most critical concerns underscores the need for Court action to enforce the basic principles underlying the Consent Decree: constitutional care and the flow of essential information to monitor Defendant’s performance. Defendant failed to produce a plan despite repeated requests until Plaintiffs filed a motion. Court intervention is necessary to prevent further stonewalling. Further delays could have drastic consequences: in the week since Plaintiffs filed the present motion, the number of people incarcerated in the jails who have COVID-19 has skyrocketed to

1 80, with 55 staff sickened with the virus. Declaration of Sara Norman in Support of
2 Plaintiffs' Reply (Norman Reply Decl.), filed herewith, Exh. A.

3 People living in the Riverside jails face serious illness and death because they
4 do not have the opportunity to practice physical distancing and appropriate hygiene.
5 Hundreds of millions keep to their homes, but the County refuses to extend basic
6 protections to people who are completely dependent on the County for their well-
7 being. This refusal is consistent with the public statements of the Sheriff
8 responsible for the jails: "If you don't want to contract this virus while in custody,
9 don't break the law." *Id.* The Sheriff's abdication of his duty to provide
10 constitutional health care demonstrates the necessity for Court intervention.

11 It is essential that the Court establish a process to review Defendant's efforts
12 in real time and to ensure Plaintiffs access to information regarding the pandemic
13 response. Accordingly, Plaintiffs seek an order requiring Defendant to produce an
14 adequate plan and for the Court to hold regular case management conferences.

15 **I. Defendant's Plan Is Inadequate to Ensure Constitutionally Required**
16 **Healthcare Because It Lacks Key Elements of a COVID-19 Response**

17 Defendant has produced a COVID-19 response plan.¹ The Court's inquiry
18 does not stop there, however. The Consent Decree requires that plans to effect
19 constitutional healthcare must be "appropriate and adequate." Consent Decree, ¶ 30.
20 Defendant's plan falls far short. See *People of the State of New York ex rel.*
21 *Stoughton v. Brann*, No. 451078/2020, 2020 WL 1679209, at *4 (N.Y. Sup. Ct. Apr.
22 6, 2020) ("[r]easonable care to mitigate must include an effort to employ an *effective*

23 ¹ Defendant's Plan appears to take as a template the plan provided by Dr. Allen with
24 his Supplemental Report. See Exh. J to Norman Decl., ECF No. 178-1, at 42-84.
25 The template appears in the left column, marked "Pandemic Response Plan." The
26 right column has Defendant's actions, marked "CHS [Correctional Health Services],
27 BH [Behavioral Health, and RSO [Riverside Sheriff] Action Plans." See Exh. A to
28 Declaration of Bonnie Carl, ECF No. 183-2, at 5. Defendant thus appears to accept
that the plan provided by Dr. Allen represents the appropriate standard of care.

1 ameliorative measure”) (emphasis in original).

2 In their Supplemental Reports, the experts describe essential elements of an
 3 adequate response to the pandemic, grounded in consensus among corrections and
 4 public health leaders. Decl. of Sara Norman in Support of Plfs’ Emergency Motion
 5 (Norman Decl.), ECF No. 178-1, Exhs. J (Allen Expert Report), K (Gage Expert
 6 Report). These elements include, most importantly, the implementation of physical
 7 distancing and reduced population density (Allen Expert Report, ¶¶ 14, 20, 23; Gage
 8 Expert Report, ¶¶ 2, 5, 9);² hygiene measures, including handwashing and sanitizing
 9 supplies and education (Allen Expert Report, ¶ 23; Gage Expert Report, ¶¶ 7, 16);
 10 measures to reduce risk for people “at highest risk of complications of infection
 11 such as age over 60 and chronic diseases including heart disease, hypertension and
 12 pulmonary disease” (Allen Expert Report, ¶¶ 16, 19, 22); and measures to ensure
 13 access to adequate mental health care during quarantine and isolation. Gage Expert
 14 Report, ¶¶ 10-14. These elements are also found in the CDC’s guidelines. Norman
 15 Reply Decl., Exh. B, at 4 (social distancing), 9-10 (hygiene), 16, 20 (high risk
 16 people), 12 (mental health). Defendant’s plan does not adequately address them.

17 **A. Defendant’s plan does not include measures to reduce population**
 18 **density in order to allow physical distancing**

19 Defendant admits that “the spread of COVID-19 is best addressed through
 20 physical distancing,” Opp. at 13, and does not dispute that the jail dormitory housing
 21 is cramped and inconsistent with physical distancing principles. *See* Allen Expert

22
 23 ² The experts both recommended achieving physical distancing through population
 24 reduction measures. Defendant argues that the PLRA deprives this Court of
 25 jurisdiction to order releases in order to reduce the density of the population which
 26 in turn is necessary to achieve physical distancing. Opp. at 14. The PLRA does not,
 27 however, prohibit the Court from ordering Defendant to meet the physical
 28 distancing requirement. It is up to Defendant to determine how to accomplish that
 goal, and population reduction is one alternative that Defendant may consider.

1 Report, ¶ 15; Gage Expert Report, ¶¶ 6-7; Plaintiffs’ Emergency Motion, April 6,
 2 2020, ECF No. 177 (Motion), at 14-15. But Defendant provides no meaningful
 3 measures to address population density in the dorms in order to provide minimally
 4 adequate protection from the risk of harm posed by the pandemic.³

5 Under the requirement to “coordinat[e] with law enforcement to minimize
 6 crowding,” the plan states that “[d]ue to our federal court order for overcrowding,”
 7 the County already “continually conduct[s] releases of low level offenders,” which
 8 “includes. . . inmates who are at a high risk factor for COVID-19.” Exh. A to
 9 Declaration of Bonnie Carl in Support of Defendant’s Opposition, ECF No. 183-2
 10 (Defendant’s Plan), at 5. The plan does nothing to increase such releases to
 11 “minimize crowding,” however, or to target high-risk people; it merely describes the
 12 practice in place before the pandemic. The plan also ignores the guideline that “[i]f
 13 space allows, reassign bunks to provide more space between individuals (ideally 6
 14 feet or more in all directions)”; it simply states that people will sleep head-to-foot,
 15 but makes no mention of how far apart they will be. *Id.* at 11. Finally, the plan has
 16 no provision for the requirement to “[e]nforce increased space between individuals
 17 in holding cells” *id.*, despite undisputed evidence that people are routinely held in
 18 crowded holding cells with up to 20 people for days at a time. Motion at 15-16.

19 An example of an adequate plan is close at hand. In California’s prison
 20 system, the Receiver responsible for medical care under the direction of a federal
 21 court has issued clear guidance regarding physical distancing, based on “the
 22 developing scientific and medical consensus regarding social distancing in
 23 correctional settings.” Norman Decl., Exh C. The guidelines cite the Center for
 24

25 ³ The plan does contain measures such as cancelling visitation, minimizing transfers
 26 and staff movement, and limiting recreation and large dayroom numbers that
 27 advance the goal of physical distancing. These measures do not address the
 28 population density that was central to the experts’ concerns, however.

1 Disease Control’s Interim Guidance and state the following:

2 Necessary social distancing is already being achieved in both single-
3 and double-celled units. In double cells, cell mates constitute one
4 another’s “social distancing cohort” for correctional purposes and are
5 analogous to a family unit in the free world. With respect to housing
6 in dorm settings, the Receiver has determined that necessary social
7 distancing can be achieved by creating 8-person housing cohorts.
8 Each cohort is to be separated from the others by a distance of at least
9 six feet in all directions.

10 *Id.* at 1. Without such a provision, Defendant’s Plan fails to meet minimum
11 constitutional standards to protect the Plaintiff class from an unreasonable risk of
12 harm. *See infra*, Section II.B

13 **B. Defendant’s plan does not address the most vulnerable populations**

14 There is nothing in Defendant’s Plan to address the most vulnerable people:
15 those who are elderly or who have underlying health conditions such as cancer, lung
16 disease, or heart disease that make them particularly at risk for severe complications
17 or death with COVID-19. *See* Allen Expert Report, ¶¶ 16, 19. Dr. Allen expressed
18 serious concern that the County has too many such patients: should the virus spread
19 extensively in the jails, a large number of people with serious complications will
20 overwhelm the capacity of the County to care for them at local hospitals. Allen
21 Expert Report, ¶¶ 12-13, 21-22. Nothing is said in Defendant’s plan about
22 preparing for the needs of this population. Without measures to address the
23 heightened risk factors of these vulnerable people, the County subjects them to an
24 unacceptable risk of serious harm or death.

25 **C. Defendant’s plan does not include adequate hygiene measures**

26 Defendant does not dispute that there are serious ongoing problems with
27 hygiene in the jails, and admits that “the spread of COVID-19 is best addressed
28 through. . . heightened cleanliness, including . . . regularly cleaning and disinfecting
frequently touched surfaces.” *Opp.* at 13. However, although there are some
measures for hygiene and sanitation and patient education in Defendant’s plan, there
are significant gaps. For example, there is no provision to “[c]onduct frequent

1 environmental cleaning of ‘high touch’ surfaces”; only daily cleaning is instituted.
 2 Defendant’s Plan at 6, 10. The provision for masks is ambiguous: the plan appears
 3 to say that masks are provided to all people in the jails, *id.* at 17 (“All inmates in our
 4 jails have been issued surgical masks”), or only to those in quarantine or isolation.
 5 *Id.* at 12 (“Inmates who develop COVID-19 symptoms are masked and placed in
 6 isolation”), 14 (new arrestees who screen positive for symptoms “are given a mask
 7 to wear”), 17 (people in medical isolation given masks). Either way, it is not stated
 8 how often masks are provided – are they replaced as needed, as the guidelines
 9 require? Or are people given only one mask to reuse, as the plan suggests? *See id.*
 10 at 17 (“All inmates. . . have been given instruction on how to care for their mask.”).

11 Finally, although Defendant notes that signage and an educational video are
 12 available to educate people in the jails about proper hygiene methods and the
 13 reporting of symptoms, the required provisions to ensure that signs and other
 14 communications are understandable for non-English speakers, people with limited
 15 reading ability, and people with disabilities are absent. *Id.* at 9, 10. For example,
 16 how can deaf people gain access to the video? How will blind people know what is
 17 on the posters? Who can hear the video as it plays in the dayroom from their cells?

18 **D. Behavioral health measures are nonexistent**

19 Dr. Gage pointed out several measures essential to ensure adequate mental
 20 health care for people in quarantine or isolation who might face exacerbation of
 21 psychiatric symptoms or suicidal ideation, such as regular rounds by behavioral
 22 health staff and the provision of cell activities. Gage Expert Report, ¶¶ 10-14.
 23 Defendant’s Plan fails to address any of these critical needs of people who are
 24 mentally ill in the face of the COVID-19 pandemic.

25 **II. The Court Must Act to Enforce the Consent Decree to Secure Plaintiffs’ 26 Rights to Constitutionally Adequate Healthcare**

27 The Court has the power to enforce the Consent Decree to (a) order
 28 Defendant to produce and implement an “appropriate and adequate” plan to provide

1 constitutional health care and (b) require Defendant to respond to Plaintiffs’ request
2 for information. Defendant’s arguments to the contrary lack merit.

3 **A. The Court can use its inherent powers to supersede the dispute**
4 **resolution process in an emergency**

5 Defendant takes the position that the Court cannot act because Plaintiffs did
6 not first undertake mediation through the dispute resolution mechanism set forth in
7 the Consent Decree. Opp. at 8-12. At the same time, however, they acknowledge
8 that the pandemic is “unprecedented” and requires “extraordinary and
9 unprecedented” measures to address it. *Id.* at 4. It is for those precise reasons,
10 along with Defendant’s intransigence in ignoring numerous and repeated requests to
11 meet and to provide information, that Court intervention is necessary.

12 Defendant did not respond meaningfully to Plaintiffs until the present motion
13 was filed. It took Court action to make Defendant act. The opportunity for informal
14 dispute resolution is past; the dispute is squarely before the Court, and time is of the
15 essence. Under these circumstances, the Court has the inherent power to hear an
16 urgent appeal for enforcement. *See* Consent Decree, ¶ 30 (the Court has “the power
17 to enforce the agreement through . . . all other remedies permitted by law”).

18 **B. Defendant’s inadequate plan violates the Eighth Amendment**

19 It is undeniable that “the Eighth Amendment requires Defendants to take
20 adequate steps to curb the spread of disease within the prison system.” *Coleman v.*
21 *Newsom/Plata v. Newsom*, Nos. 90-cv-0520 KJM DB P, 01-cv-1351 JST, 2020 WL
22 1675775, at *5 (E.D. Cal./N.D. Cal., Apr. 4, 2020). More specifically,

23 Plaintiffs may go before a single [district court] judge to press their
24 claim that Defendants’ response to the COVID-19 pandemic is
25 constitutionally inadequate. For example, if they believe that the
26 response violates Plaintiffs’ right to adequate medical care, they may
27 seek relief before the individual . . . court [overseeing medical care
28 consent decree] If a single-judge court finds a constitutional
violation, it may order Defendants to take steps short of release
necessary to remedy that violation.

Id. at *7. That is precisely what Plaintiffs seek: a remedy for Defendant’s

1 constitutionally inadequate response to the pandemic, which places the Plaintiff
2 class at unreasonable risk of harm. *See id.* at *6 (“to the extent Plaintiffs can
3 establish a constitutional violation based on the threat posed by COVID-19, it must
4 be based on shortcomings in Defendants’ response to the virus”).

5 Defendant’s argument that the motion presents a new issue, and that the
6 Consent Decree and Remedial Plan were “never intended to prepare the County to
7 confront an unprecedented pandemic,” *Opp.* at 12, is a red herring. The Consent
8 Decree and Remedial Plan are designed to bring the jails’ health care delivery
9 system into constitutional compliance. Consent Decree, ¶ 9. Constitutional care
10 requires measures to prevent the spread of a dangerous, contagious illness. *See*
11 *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (8th Amendment requires a remedy for
12 conditions that allow the spread of “infectious maladies such as hepatitis and
13 venereal disease”) (citation omitted). There is no exception for times of emergency.

14 Defendant argues that the remedy Plaintiffs seek is vague, intrusive, and
15 extends further than necessary. *Opp.* at 12-13. Not so: Plaintiffs merely seek to
16 ensure that Defendant’s pandemic response plan conforms to the standards as
17 described by the experts and the CDC. *See supra*, Section I.

18 Contrary to Defendant’s assertion, *Opp.* at 14, Plaintiffs do not seek a
19 prisoner release order. Plaintiffs seek merely an order that Defendant implement
20 physical distancing and other required COVID-19 prevention measures in the jails.
21 Defendant may determine how to accomplish that goal; population reduction is one
22 alternative for Defendant to consider. *See Decl. of Misha Graves*, ECF No. 183-4
23 (new jail construction is complete and Sheriff’s Department has control of building).

24 Defendant argues the Court must defer to the County to manage the health
25 care for people in its jails. *Opp.* at 14-16. But while courts must give some
26 deference to prison administrators, the Supreme Court has counseled that where a
27 “government fails to fulfill [its] obligation [to provide adequate health care], the
28

1 courts have a responsibility to remedy the resulting Eighth Amendment violation.”
2 *Brown v. Plata*, 563 U.S. 493, 511 (2011). Thus, while courts should be sensitive to
3 principles of federalism, “[c]ourts nevertheless must not shrink from their obligation
4 to enforce the constitutional rights of all persons, including prisoners,” and “may not
5 allow constitutional violations to continue simply because a remedy would involve
6 intrusion into the realm of prison administration.” *Id.* (quotations, citations omitted).

7 Moreover, Defendant’s argument that the County is entitled to deference
8 because it has acted to ward off the pandemic in the jails rings hollow given the
9 position of the Riverside Sheriff: “If you don’t want to contract this virus while in
10 custody, don’t break the law.” Norman Reply Decl., Exh. A. In so saying, the
11 Sheriff demonstrates not just deliberate indifference to constitutional norms but a
12 callous disregard to the human lives in his custody. The County’s stonewalling and
13 the inadequacy of its COVID-19 response plan must be viewed in this context.

14 **C. Defendant’s actions demonstrate recalcitrance and a refusal to**
15 **provide essential information**

16 Defendant has demonstrated recalcitrance in refusing to respond substantively
17 to Plaintiffs’ request for a COVID-19 response plan until ordered to do so by the
18 Court. That “system-wide COVID-19 Pandemic Response Plan” appears to have
19 been generated only recently, since it is based on a plan provided by Dr. Allen on
20 March 19, 2020. *See* Allen Expert Report, ¶ 17. Defendant has never answered
21 crucial questions sent on March 22, 2020, including basic information such as the
22 jails’ capacity to isolate or quarantine a large number of potential cases, the current
23 population of the jails, and whether there is a target population for safe jail
24 conditions based on maximizing social distancing and accounting for the capacity of
25 medical operations to care for people with COVID-19 complications. Norman
26 Decl., Exh. G. There is no reason to believe it will do so absent Court action.

27 Essential information is still lacking to determine the adequacy of
28 Defendant’s response to the pandemic: How many people live in dorms, and how

1 close are their beds? How many quarantine and isolation cells are available? How
2 often are high-touch surfaces disinfected? How many masks are provided to people
3 in the jails? How many tests have been done, and how many tested positive? Are
4 clusters of positive cases tracked to determine the causes and to prevent such
5 clusters from occurring in the future?

6 Defendant must answer to the apparent inadequacies in the current plan, and
7 Plaintiffs need access to information in order to continue to monitor the
8 constitutional sufficiency of Defendant's actions. In the *Coleman v. Newsom* class
9 action regarding mental health care in the California prison system, the court holds
10 regular case management conferences and has recently ordered the State to produce
11 a COVID-19 plan. See Request for Judicial Notice, filed herewith, Exhs. A, B. In
12 the *Plata v. Newsom* case, the court similarly holds case management conferences to
13 ensure the parties and the court are fully appraised of the State's pandemic response.
14 *Id.*, Exhs. C, D. Accordingly, Plaintiffs request that the Court hold regular case
15 management conferences to ensure that the County provides essential information to
16 Plaintiffs and the Court, with the involvement of the Court experts as appropriate to
17 advise the Court on the constitutional sufficiency of Defendant's responses.

18 **CONCLUSION**

19 For the foregoing reasons, Plaintiffs respectfully request the Court to enforce
20 the Consent Decree by ordering Defendant (a) to submit a plan to correct the
21 deficiencies identified herein and (b) to respond to Plaintiffs' information requests
22 by April 15, 2020. Plaintiffs further request that the Court set weekly cases
23 management conferences as described above.

24 Dated: April 13, 2020

PRISON LAW OFFICE

25
26 By: /s/ Sara Norman

SARA NORMAN

27 Attorneys for Plaintiffs