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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **OAKLAND**

11 MARCIANO PLATA, et al.,
 12 *Plaintiffs,*
 v.
 13 GAVIN NEWSOM., et al.,
 14 *Defendants.*

Case No. C01-1351 JST

**DECLARATION OF THOMAS
 HOFFMAN IN SUPPORT OF
 PLAINTIFFS' EMERGENCY
 MOTION**

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DECLARATION OF THOMAS HOFFMAN

I, Thomas Hoffman, declare:

1. I am a public safety executive who has been involved in California municipal and State law enforcement and corrections for over 42 years. During my career I served with the City of Inglewood Police Department (1975-1994), the City of West Sacramento Police Department (1994-2004), and as the Director of the California Department of Corrections and Rehabilitation’s (CDCR) Division of Adult Parole Operations (DAPO) (2006-2009). Since August 2009 I have worked as a consultant on public safety, corrections, and parole issues.

2. While serving with the City of Inglewood Police Department (1975-1994), I promoted through the ranks from Officer to Captain, working in the areas of Operations, Investigations, Special Operations and Administration. I also served with the City of West Sacramento Police Department (1994-2004) serving as Captain, Deputy Chief of Police and as Interim Chief of Police.

3. In 2006, I was appointed to be the Director of the Division of Adult Parole Operations (DAPO) of the California Department of Corrections and Rehabilitation. DAPO is the arm of CDCR that is responsible for all parole operations. As Director, I was responsible for policy development, administration, and oversight of an organization of 2,400 sworn and 1,800 non-sworn employees charged with the day-to-day supervision of over 135,000 State parolees. During that time, DAPO was responsible for all programming provided to California parolees being released from prison. Furthermore, during my tenure as Director of DAPO, parole supervision became one of the most hotly debated public safety issues of our time. From 2006 to 2009, DAPO initiated the largest expansion in the number, scope and diversity of post-release rehabilitative programs in its history. During that time, DAPO was also responsible for the implementation of Jessica’s Law (the highly controversial and complex sex offender management law), the

1 development of a validated risk and needs assessment instrument (COMPAS/CSRA), and
2 the development of the parole violation decision making instrument (PVDMI).

3 4. During my tenure at DAPO, I also personally directed the Division's
4 strategy for the implementation of the recommendations of the California Expert Panel
5 (2007) and the Rehabilitation Strike Force (2008). The California Expert Panel was a
6 nationally renowned group of correctional professionals and academics who gathered to
7 conduct an analysis of CDCR policies and practices, and to recommend areas for
8 improvement. The Rehabilitation Strike Force was tasked with offering
9 recommendations for the resources provided as part of AB 900, which provided funding
10 for additional criminal justice facilities to California communities. The recommendations
11 identified in these two reports often served as my personal "roadmap" when I considered
12 a specific policy or strategy for implementing organizational change throughout my
13 tenure as Director.

14 5. Upon my retirement from CDCR/DAPO in August 2009, I was engaged as
15 a correctional/parole consultant by the Adult Parole Operations division of the Colorado
16 Department of Corrections to facilitate the development of a parole violation decision
17 making instrument. As was the case in California, this process was undertaken to ensure
18 transparency, equity, and consistency in the remedies imposed by officers and
19 supervisors in response to parole violations or criminal activity by those under their
20 supervision.

21 6. Since my retirement from CDCR I have also served as an Executive Fellow
22 with the Police Foundation, headquartered in Washington DC. The Police Foundation is
23 a national non-profit, bipartisan organization with a commitment to improve American
24 policing. In this capacity I have served as a primary point of contact for the Foundation's
25 work on the implementation of AB 109 (California's 2011 "realignment" of the criminal
26 justice system), parole reform, sentencing reform, and most recently, the debate about the
militarization of the American police.

1 7. Since October 2012, I have also served as the Senior Public Safety Advisor
2 for Californians For Safety and Justice (CSJ). CSJ is a foundation-funded non-profit
3 organization that encourages the development of “smart justice” solutions for local,
4 county and State organizations. In this capacity, I played a lead role in developing the
5 campaign strategy for outreach and communication with local law enforcement leaders
6 and others in the successful Proposition 47 campaign in 2014. I am also working with
7 the Fontana, Santa Barbara and San Luis Obispo Police Departments as they implement
8 enforcement programs designed to improve the resources and services available for their
9 Officers when they interact with mentally ill individuals, disabled veterans and homeless
10 people in their communities.

11 8. On March 24, 2020, I provided a declaration to the Three-Judge Court
12 presiding over the population remedy in the *Plata* and *Coleman* litigation, regarding the
13 means by which the CDCR can respond to the COVID-19 crisis by reducing the resident
14 population in CDCR institutions, while protecting and promoting public safety. On April
15 1, 2020, I provided a supplemental declaration to the Three-Judge Court in response to
16 March 31, 2020 declaration of Jeffrey Green, the current DAPO Director. My April 1,
17 2020 Declaration addressed Mr. Green’s statements regarding the pre-release workload
18 associated with releasing prisoners from CDCR. As I stated in my April 1, 2020
19 Declaration, it is my opinion that CDCR is misusing Mr. Green’s description of the pre-
20 release workload to create the impression that releases cannot be accelerated for persons
21 whose release dates are now between 60 and 180 days in the future without impairing
22 public safety. I am very familiar with the pre-release process, having developed much of
23 that process as part of my duties at DAPO Director.

24 9. I have reviewed the discussion of the pre-release planning process that
25 CDCR presented as part of its Case Management Conference statement to this Court on
26 April 9, 2020, Docket No. 3269, at pages 7 through 13. This entire discussion is a one-
sided recitation of all of things that CDCR officials believe they cannot do, leaving out all

1 of the things that they can do. For example, at page 9, CDCR states that “approximately
2 thirty percent of released offenders would probably become homeless if they were not
3 provided housing, and upwards of forty to fifty percent of all released offenders are likely
4 to experience residency instability during their supervision.” An agency interested in
5 solving problems would look at the other side of that coin—if 30% would probably
6 become homeless, that means that 70% probably would not. If 40-50% are likely to
7 experience residential instability, then 60-50% would likely have stable residences.
8 Instead of complaining about the 30% likely to be homeless, CDCR should get to work
9 immediately to reduce the unnecessary presence in the prisons of as many of the 70% as
10 possible, as quickly as possible.

11 10. At pages 11 through 13 of the April 10 Joint Statement, CDCR outlines the
12 pre-release steps that would be applicable to the approximately 5,500 persons who are
13 between 60 and 180 days to release. The upshot of this discussion appears to be to
14 discourage any action on the grounds that it would take tens of thousands of hours for
15 CDCR to process the entire 5,500 person group at once. I disagree with this approach
16 because it makes two errors: First it assumes that CDCR would make no effort at all to
17 focus their efforts on those most vulnerable to the COVID-19 virus and/or those
18 presenting the lowest risks upon release. Second, it assumes that CDCR and DAPO must
19 complete every step of the pre-release process thoroughly and perfectly, something that it
20 has never done until now.

21 11. On the first erroneous assumption—CDCR has a wealth of data about the
22 ages and medical conditions of the 5,500 persons now within 180 days of parole that it
23 could use to focus on the most vulnerable first, rather than trying to address the entire
24 group. I have reviewed the Declaration of James Austin being filed concurrently with
25 this declaration, and analyzing some of this data, and showing how with just some
26 filtering of a spreadsheet of 50,000 COVID-19 vulnerable inmates recently provided by

1 CDCR, it is possible to focus and prioritize the pre-release workload to maximize the
2 beneficial effects in reducing the spread of COVID-19 in the prisons.

3 12. CDCR also has a wealth of data to focus its efforts based on public safety
4 factors. The spreadsheet of 50,000 COVID-19 vulnerable inmates also has risk
5 assessment (CSRA) and risk/needs assessment (COMPAS) data points. Dr. Austin has
6 cross-referenced many of these data points in his declaration to show that CDCR has the
7 chance to further focus its efforts based on risk of violent offenses after release, and on
8 factors such as residential stability. CDCR has an opportunity now to shape its efforts in
9 ways that minimize the burdens on county and local resources, by focusing on persons
10 with high-levels of residential stability (i.e., they have a place to live on release and are
very unlikely to end up homeless.)

11 13. The second erroneous assumption is that the pre-release process must be
12 letter-perfect and consume every possible hour of workload for each case. To my
13 knowledge, the pre-release process has never been so perfect in the past, and it is not
14 realistic or prudent to expect perfection during this emergency. Historically, the CDCR
15 and the counties have had tremendous discretion in deciding how and when to administer
16 the various steps of the pre-release process. The entire California criminal justice system
17 has taken dramatic and immediate steps to address the corona virus emergency. For
18 example, sheriffs are releasing people from jail custody to allow necessary social
19 distancing, and police departments are limiting arrests to the most serious offenses. It is
imperative that CDCR and DAPO respond with a similar level of urgency.

20 14. Rather than pointing to the ideal pre-release and supervision processes as
21 an obstacle, CDCR and DAPO should be changing the process to fit the emergency.
22 Many of these changes are likely to be more effective in the long-term than current
23 practices and may outlive the emergency as well. Examples of effective measures
include:

1 15. Prioritize the pre-release process for those people within 180 days of
2 release who are most at risk for complications of the corona-virus due to age or medical
3 condition. Refine the pre-release review to focus on the CSRA risk assessment score,
4 and the person’s housing plans upon release. The objective is to get people out of the
5 crowded institutions and into environments where social distancing mandates can be
6 followed. The other aspects of parole supervision and programming can be addressed
7 later when the crisis has abated.

8 16. CDCR should convert the one-time expedited release of persons who were
9 within 60 days of release as of April 1, 2020 to a rolling process. It has now been two
10 weeks since April 1, meaning that there is now another cohort of people who are within
11 60 days of release for whom the process can be expedited.

12 17. Although I have previously recommended releasing persons from DAPO
13 supervision if they have been free of criminal behavior and parole violations for 180
14 days, it is clear that CDCR is highly resistant to this option. There are other options
15 available to increase and focus DAPO’s supervision resources. DAPO can create a
16 “banked” caseload designation and transfer any person currently under their control that
17 is 180 days or less from his/her controlling discharge date (CDD) to that status. The
18 “monitoring” this population requires (mainly in place to ensure DAPO responds to any
19 adverse contact between a parolee and local law enforcement) can be handled by a non-
20 sworn classification that is supported by a limited number of sworn personnel. This
21 policy shift will create opportunities for reassignment of Agents to respond to the
22 unanticipated new population of Covid19 parolees. It is important to note that County
23 Probation Departments have routinely operated with over 75% of their entire adult
24 population in this status, with caseloads of 300 people to one Officer not being
25 uncommon. DAPO could adopt a similar practice while the pandemic runs its course and
26 society slowly returns to what will likely be a new “normal”.

1 18. DAPO can create a new “classification” of supervision, perhaps referred to
 2 as “Covid19”. In consideration of the fact the scope of the pre-parole planning process
 3 has been reduced, develop case specifications that reflect the current reality in our
 4 communities. The supervision strategy should reflect an understanding that the priority
 5 for the time being is simply to ensure that the very basic and immediate needs of the
 6 person being supervised are addressed. This is not to suggest that being alert for the
 7 possibly of criminal behavior not be an aspect of the Agent’s daily responsibilities. As
 8 the pandemic and its implications on our society and the criminal justice system
 9 specifically evolves DAPO can modify the scope and complexity of the oversight and
 programming of the person being supervised.

10 19. In conclusion, the processes that CDCR and DAPO have described to the
 11 Court are not etched in stone, and can be modified quickly to respond to what is now a
 12 very different world from the one we lived in when these processes were created. The
 13 persons held in the prisons who are vulnerable to this pandemic—as well as the people of
 14 this State who would be harmed if our hospitals are flooded by a surge of prison-
 15 generated COVID-19 patients--need and deserve a higher level of urgency and creativity.

16 I declare under penalty of perjury under the laws of the State of California that the
 17 foregoing is true and correct, and that this declaration is executed at Folsom, California
 18 this ___ day of April, 2020.

19 _____
 20 Thomas Hoffman

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19. In conclusion, the processes that CDCR and DAPO have described to the Court are not etched in stone, and can be modified quickly to respond to what is now a very different world from the one we lived in when these processes were created. The persons held in the prisons who are vulnerable to this pandemic—as well as the people of this State who would be harmed if our hospitals are flooded by a surge of prison-generated COVID-19 patients--need and deserve a higher level of urgency and creativity.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed at Folsom, California this ___ day of April, 2020.



Thomas Hoffman

Dated: [DATE]

Respectfully submitted,

/s/