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14  
15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**  
17

18 MARCIANO PLATA, et al.,

19 Plaintiffs,

20 v.

21 GAVIN NEWSOM, et al.,

22 Defendants.

CASE NO. 01-1351 JST

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Date: June 19, 2020  
Time: 3:00 p.m.  
Crtrm.: 6, 2nd Floor  
Judge: Hon. Jon S. Tigar

1 The parties submit the following joint statement in advance of the June 19, 2020  
2 Case Management Conference (CMC).

3 Since the last CMC, the parties have met and conferred on a number of occasions  
4 regarding multiple topics relating to Defendants' response to the COVID-19 pandemic,  
5 including: staff testing, resumption of intake, measures to decrease population density,  
6 intra-prison transfers of medically high-risk incarcerated people from dorms to cells,  
7 transfer protocols, and further efforts to achieve physical distancing and compliance with  
8 safety precautions and mandates. The outcome of the parties' discussions, and their  
9 positions on the topics, are relayed below.

#### 10 **I. EFFORTS TO DECREASE POPULATION DENSITY**

11 Before discussing the plan to further reduce the prison population, Defendants note  
12 that in three months, from March 19 to June 17, CDCR's institution population has  
13 decreased by 7,914 people, while CDCR's in-custody population has decreased by 8,372  
14 people<sup>1</sup>. These decreases are largely the result of measures implemented by CDCR to  
15 reduce the prison population in response to the pandemic. They have assisted CDCR in  
16 mitigating and managing the spread of the virus.

17 In addition to these population reduction measures, as Defendants explained last  
18 week, CDCR is in the process of implementing a new community supervision plan to  
19 further safely reduce the prison population under California Government Code section  
20 8658. Under the plan, incarcerated people who are within 180 days of their release date  
21 will be supervised in the community if they meet the following criteria:

- 22 • They are not serving a current term of incarceration for a violent felony  
23 offense as defined by California Penal Code section 667.5(c);

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24  
25  
26 <sup>1</sup> CDCR's "institution population" refers to people housed within CDCR's 35 adult institutions.  
27 CDCR's "in-custody population" refers to people housed outside of the institutions, including, for  
28 instance, in camps, another state, Bureau of Prisons, out to court, in transit, or in the Male  
Community Reentry Program.

- 1 • They are not serving a current term of incarceration for a serious felony
- 2 offense as defined by California Penal Code section 1192.7(c);
- 3 • They are not required to register under California Penal Code section 290;
- 4 • They are not serving a current term of incarceration for a domestic violence
- 5 offense;
- 6 • They do not have a California Static Risk Assessment score indicating a high
- 7 risk for violence; and
- 8 • They have a post-release housing plan.

9 Under CDCR's plan, released offenders will be supervised in the community until  
10 the individuals reach their natural release date. At that time, the individuals will either  
11 transition to county supervision or state parole, whichever is consistent with the  
12 commitment offense.

13 **Plaintiffs' Position:**

14 Plaintiffs welcome this population reduction measure because it may provide a  
15 limited amount of additional space that is necessary to protect people in prison from the  
16 virus and its related disease. The actual effect on the prison population is unknown  
17 because of the uncertainty surrounding the resumption of intake and the number of people  
18 who will be actually released or removed from prison. Plaintiffs understand Defendants  
19 estimate approximately 530 people will be released early on parole each month, in addition  
20 to the roughly 3,000 who are released normally on parole. Even if these projections are  
21 understood correctly and actually happen, the population will not decrease by an additional  
22 530 because other people will be received by CDCR through intake. Currently, CDCR is  
23 accepting a maximum of 200 people for the month of June but no decision has been made  
24 for July. Assuming the intake number does not increase, the population will drop by an  
25 additional approximately 330 people each month. In six months the total additional  
26 population reduction will be about 2,000. If the level of intake is increased, the expected  
27 population drop will be commensurately less.

28 More importantly, the Community Supervision Program does not directly address

1 the plight of those most in need of relief. The program does not release to community  
2 supervision those at the highest risk of serious injury and death and at the lowest risk to  
3 public safety.

4 While we very much appreciate the Secretary's action in reducing the population,  
5 Plaintiffs believe that further reductions are necessary and should be targeted at those most  
6 at risk. Because those released early generally will be people convicted of lower level  
7 offenses who are housed in dormitories and thus their release will not increase the number  
8 of cells available for medically vulnerable people currently housed in dormitories. The  
9 prisons will remain seriously overcrowded and unable to provide the social distancing that  
10 is necessary to reduce the risk of infection to an acceptable level.

11 **Defendants' Position:**

12 CDCR has begun the process of reviewing the inmate population to identify inmates  
13 who might potentially meet all of these criteria, and anticipates that the first inmates  
14 released to community supervision under this plan will occur on July 1, 2020. Based on  
15 the information reviewed so far, CDCR has identified a group of approximately 3,500  
16 inmates who might satisfy the criteria for release in July, but CDCR has not yet determined  
17 which individuals in this group satisfy all of the criteria. Thus, in the first month of  
18 community supervision under this new plan, it is not expected that the total releases will  
19 exceed 3,500 inmates, and the total number could be less depending on the number of  
20 candidates who satisfy all of the criteria. Determining whether every eligible candidate  
21 has a post-release housing plan is one of the more challenging and time-consuming criteria  
22 to confirm.

23 Whatever the total number of releases in July will be, CDCR currently anticipates  
24 that community supervision under the new plan will continue on a rolling basis beyond  
25 July, and that on a weekly basis, CDCR will identify a new group of inmates who are  
26 newly within 180 days of release, and who will become potentially eligible for community  
27 supervision.

28 ///

1 **II. TESTING STAFF FOR COVID-19**

2 On June 16, 2020, CDCR produced its comprehensive COVID-19 staff-testing plan,  
3 which is attached as **Exhibit A** to this statement. As discussed during last week's Case  
4 Management Conference and stated in the parties' June 9, 2020 Case Management  
5 Conference Statement, the plan sets out three different protocols for staff testing at: (1)  
6 California Health Care Facility (CHCF), California Medical Facility (CMF), and Central  
7 California Women's Facility (CCWF); (2) all other prisons without COVID-19 cases; and  
8 (3) all other prisons with active COVID-19 cases.

9 For the first group of institutions (CHCF, CMF, and CCWF), the plan requires those  
10 institutions to adopt the California Department of Public Health's (CDPH)  
11 recommendations for staff testing at skilled nursing facilities (SNF), which is an  
12 aggressive testing protocol. (Exhibit A at 1; *see* Memorandum from Deputy Director  
13 Heidi Steinecker to Skilled Nursing Facilities (May 22, 2020), available at:  
14 <https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-20-53.aspx>.) The CDPH SNF  
15 Guidance calls for universal baseline testing of all staff, followed by regular surveillance  
16 testing of 25% of staff each week, such that 100% of staff are re-tested every month. *Id.*  
17 The CDPH SNF Guidance also calls for testing all staff and serial re-testing every seven  
18 days thereafter until no new cases are identified in two sequential rounds of testing, after  
19 one (or more) individuals (resident or staff) tests positive for COVID-19. *Id.*

20 With respect to prisons with no recent COVID-19 cases, the plan requires  
21 surveillance testing of 10% of all staff every 14 days, such that all staff will be tested in  
22 five months. The plan also calls for monthly testing of staff regularly assigned to transport  
23 duty, guarding duty at a community hospital, or culinary areas. Finally, the plan calls for  
24 testing of staff pursuant to the CDPH SNF Guidance if they are regularly assigned to  
25 inpatient medical or mental health beds. . (*Id.*)

26 Finally, at institutions where there have been recent COVID-19 cases, the plan calls  
27 for serial retesting of staff every 14 days until no new cases have been identified in two  
28 sequential rounds of testing. This testing may be limited to the yard where the incarcerated

1 person who has tested positive is housed or the staff person who has tested positive is  
2 assigned. (*Id.* at 4.)

3 Plaintiffs submitted a number of follow-up questions about the staff-testing plan on  
4 June 17, 2020, which Defendants will endeavor to answer.

5 **Plaintiffs' Position:**

6 Plaintiffs strongly support the decision to begin regular, organized testing of staff,  
7 and believe this testing should begin as soon as possible. In general, Plaintiffs agree with  
8 the testing protocols proposed for CMF, CCWF, and CHCF, and for the staff regularly  
9 assigned to the inpatient medical and mental health units. We have some questions and  
10 concerns about the protocols proposed for the remaining prisons, which we provided to  
11 Defendants on Wednesday afternoon. Among others, these include the following  
12 observations and questions:

- 13 • Plaintiffs have asked whether staff will be obligated to report positive test  
14 results if they are tested privately. As we understand it, this is not currently  
15 required.
- 16 • For prisons with COVID-19 cases, the plan calls for serial retesting of all  
17 staff, but indicates that “[i]t is not necessary to test staff across multiple  
18 yards as long as staff are not moving among buildings to provide services.”  
19 Plaintiffs do not agree with this carve-out. Even if staff do not work on the  
20 same yard, they are likely to interact with each other during shift change and  
21 outside of work, as many staff members live and recreate in the same  
22 communities. We believe all staff should be re-tested whenever there is a  
23 new COVID-19 case at a prison.
- 24 • The plan calls for more frequent testing of staff “regularly assigned” to  
25 inpatient medical or mental health beds, transport duty, guarding duty at a  
26 community hospital, and culinary areas. However, the plan does not define  
27 “regularly assigned.” Plaintiffs believe these provisions should apply to all  
28 staff members who actually work in these areas, and have asked whether

1           there are any restrictions on staff covering/swapping these shifts.

- 2           • The plan defines staff as those “who interact with inmates.” Plaintiffs  
3           believe this definition is too narrow. Staff who are not in direct contact with  
4           incarcerated people may be in contact with staff who are, and thus could still  
5           introduce and spread the virus.
- 6           • The plan only calls for surveillance testing of 10% of the staff each month at  
7           prisons without COVID-19 cases. When asked for the factual basis or  
8           reasoning for testing 10% Defendants refused to respond.
- 9           • The plan only calls for testing transportation staff once per month, while  
10          CCHCS states that incarcerated persons should be tested within 7 days of  
11          transfer. Since the virus does not distinguish between those who live and  
12          work in the prisons, the testing regimen should be the same for both.

13           **Defendants’ Position:**

14           On an emergency basis, CDCR has already entered into a contract with a lab to  
15          provide the staff testing for California Medical Facility, California Health Care Facility,  
16          and Central California Women’s Facility, and testing under that contract should commence  
17          this week. CDCR is working on the completion of expedited emergency contracts that will  
18          cover the remainder of the testing called for by the testing plan, and that process is nearly  
19          complete. CDCR anticipates that testing under those contracts will commence next week.

20           In the meantime, and in response to the Court’s directive, from June 11 through  
21          June 15, 2020, CDCR tested 1,668 staff (94.9% of staff) at San Quentin and 1,872 staff  
22          (92.6% of staff) at California State Prison – Corcoran.<sup>2</sup> The June 11, 2020 testing at San  
23          Quentin and Corcoran was focused on the custody and healthcare staff who may have  
24          come into contact with the CIM inmate-transferees.

25          ///

26          \_\_\_\_\_

27          <sup>2</sup> Not all staff were tested at these facilities for a number of reasons, including employees out on  
28          sick leave, disability leave, parental leave, vacation, and remote assignment.

1 **III. TRANSFERS**

2 **A. The Transfer Of Medically High-Risk Individuals From Dorms To Cells**

3 **Plaintiffs' Position:**

4 The parties and the Receiver have agreed in principle on a plan to move as many  
5 medically vulnerable patients living in dorms to cells as possible, based on the Receiver's  
6 determination that celled housing presents a significantly lower risk of contracting  
7 COVID-19 than dorm housing. That agreement is as follows:

8 CCHCS will immediately identify all patients who are 65 and over and living in a  
9 dorm. CCHCS will share that information with DAI and with healthcare at the  
10 institutions. The healthcare staff at institutions with these patients will discuss with  
11 each of these patients the risks and benefits of staying in the dormitory or  
12 transferring to a cell either at that institution or another institution. These  
13 discussions with patients will occur in reverse chronological order so that the oldest  
14 patients are selected first. CCHCS will inform DAI of all the patients who consent  
15 to be transferred. DAI will endeavor to transfer these patients to a cell at the  
16 existing institution or another institution. Patients will not be transferred to another  
17 institution until the Receiver approves the transfers.

18 In order to evaluate how to operationalize this agreement, Defendants have  
19 provided Plaintiffs' counsel with a recent Institutional Bed Report and have agreed to  
20 provide a list of available cells. In addition, the parties and the Receiver met by  
21 conference call on June 16 to discuss several operational issues, including the process for  
22 identifying eligible patients, the classification process and the procedure for providing  
23 information to the patients about the risks and benefits of moving from their existing  
24 housing to cells in other parts of the prison or, if applicable, to another prison. The parties  
25 also discussed the need to address mental health and other disability accommodations  
26 when making placement decisions. The parties expect these discussions to continue until  
27 these issues are resolved.

28 **Defendants' Position:**

On June 16, 2020, the Receiver, Plaintiffs, and Defendants reached agreement in  
principle regarding the intra-prison transfer of medically high-risk individuals from dorms  
to cells. Under the terms of this agreement, CCHCS will immediately begin the process of



1 identifying all patients age 65 and over who are presently living in a dorm setting.  
2 CCHCS will prioritize patients who are at highest risk for a bad outcome if they were to  
3 contract COVID-19, including in reverse chronological order by age. CCHCS will then  
4 share that list with DAI and with healthcare at the institutions. The healthcare staff at the  
5 institutions where these patients are located will then discuss with the patients the risks and  
6 benefits of transferring from the dormitory setting into a cell at that same institution.  
7 CCHCS will inform DAI of the patients who consent to be transferred. DAI will then  
8 endeavor to transfer these patients who consent to be transferred in the order they appear  
9 on the list.

10         The parties and CCHCS participated in a telephonic meet-and-confer discussion on  
11 June 16, 2020, to further discuss the details of this agreement. DAI indicated it is in the  
12 process of analyzing the availability of cell beds at each institution where dorms are  
13 located. This is not an easy process because certain cell beds, while not occupied, must  
14 remain vacant for a number of reasons, and are thus not “available” for purposes of these  
15 transfers. For instance, while cells may typically accommodate two beds (and thus, two  
16 inmates), a number of cells are occupied by inmates who have been classified as “single-  
17 cell status,” meaning, for security reasons, they may not share a cell. Additionally, other  
18 cells have been “deactivated” due to their condition or some other physical limitation and  
19 thus are no longer inhabitable. Other cell beds are considered “not in service” because  
20 they are temporarily uninhabitable and undergoing maintenance or renovation. Further,  
21 cells housing units should not be crowded up to 200% capacity because it would make  
22 appropriate physical distancing in those units and facilities difficult or impossible in  
23 common areas. This, in turn, would likely have an adverse impact on programming, the  
24 ability to provide an appropriate amount of treatment space and medical care, and normal  
25 functioning and services in these units. A certain number of cells must also remain  
26 available for medical isolation. It is also likely that many of the inmates who will be  
27 considered for transfer from dorms to cells will require lower bunks due to health care  
28 factors, further limiting the availability of appropriate cell beds. DAI anticipates that it

1 will complete its analysis of available cell beds by June 24, 2020.

2       Once DAI completes the process of identifying available cell beds and CCHCS has  
3 compiled its list of medically high-risk inmates who consent to transfer from dorm to cell,  
4 DAI will then review CCHCS' list to determine where inmates may be placed. This  
5 process will take into consideration an inmate's compatibility with a potential cellmate,  
6 enemy list, case factors, security level, and health care factors. Additionally, if an inmate  
7 has to move to another yard within an institution, the Unit Classification Committee must  
8 meet to consider the transfer and identify any issues with respect to potential enemy  
9 concerns or security concerns, for instance.

10       **B. Educating Medically Vulnerable Individuals in Dorms About Transfers**

11       After asking for and receiving input from Plaintiffs, CCHCS circulated a one-page  
12 information sheet they intend to provide patients whom they offer a transfer from a dorm  
13 to a cell, plus a Refusal Form that patients would sign if they decline the offered transfer.  
14 When Plaintiffs suggested an addition to the information sheet that would more directly  
15 quantify the risk of being infected with COVID-19 in a dorm compared to celled housing,  
16 CCHCS explained among other things that additional information would be provided to  
17 patients by medical staff when a possible transfer is discussed, and that medical staff  
18 would use a script prepared for that purpose. Plaintiffs have asked to see a copy of that  
19 script, and CCHCS stated that it would be provided when done. CCHCS also said patients  
20 would not be counseled and asked to make a decision about a dorm to cell move unless  
21 and until a specific location for the move could be specified.

22       **Plaintiffs' Position:**

23       The education of medically vulnerable patients regarding the risks if infected with  
24 COVID-19 is crucial for individuals to make an informed decision regarding whether to  
25 move from a dorm to a cell. Although the information sheet is mostly well done, Plaintiffs  
26 cannot say whether the education to be provided is adequate until we consider the script to  
27 be used by medical staff when counseling patients. Plaintiffs agree that patients should not  
28

1 be asked to decide whether to move from a dorm until a cell at a specific location is  
2 offered.

3 **C. The CIM Transfers and Updated Transfer Protocols**

4 **Plaintiffs' Position:**

5 At the time of the late May transfers of hundreds of medically vulnerable patients  
6 from the California Institution for Men (CIM) to San Quentin and Corcoran State Prison –  
7 done to try to remove those patients from the massive COVID-19 outbreak at CIM –  
8 CCHCS protocols, issued on May 22, provided that patients must test negative for  
9 COVID-19 before transfer, but did not specify a pre-transfer time frame for that test. Nor  
10 were CIM staff specially told by Headquarters any time frame for testing these particular  
11 patients before the transfers, which were ordered by Headquarters. Nor were any  
12 directives given regarding testing after Plaintiffs' May 22nd email raising concerns about  
13 CIM housing practices possibly exposing patients who previously tested negative,  
14 including those up for transfer, to the virus. It also appears that CDCR staff who drive the  
15 buses and provide security may not have been tested prior to transfer, increasing the risk of  
16 transmission.

17 Patients were transferred from CIM at the end of May based on negative COVID-19  
18 negative tests done in the middle or near the start of the month. Some of those tested  
19 positive for COVID-19 shortly after arrival at San Quentin and Corcoran, meaning they  
20 were likely positive at the time they were transferred. Others transferred to San Quentin  
21 on the same bus as those patients subsequently tested positive for the virus. One of them  
22 is hospitalized, in an ICU and on a ventilator.

23 It is deeply unfortunate that transfers done to keep people safe have resulted in  
24 some becoming positive, and have introduced the virus to a prison – San Quentin – where  
25 previously there were no confirmed cases. Although it cannot be said for certain that  
26 negative tests done closer in time to the transfer date would have prevented what has now  
27 occurred, it was a poor decision to not require such tests to incarcerated people and staff,  
28 given public health principles and common sense, and the alert about CIM housing

1 practices we sent to CCHCS on May 22. CCHCS’s current comprehensive reconsideration  
2 of its testing and transfer protocols is clearly necessary.

3 The more general lessons are also clear. CCHCS must specify timeframes for  
4 testing, transfers, the staff who should be tested and all related matters involving patient  
5 safety.<sup>3</sup> Similarly, CCHCS must mandate action, including regarding the timing of tests,  
6 so that the message is clear and staff can be held fully accountable for noncompliance. In  
7 this regard, the use of discretionary language, such as the “may” and “should not” in the  
8 June 2 and June 5 policy statements regarding testing, cannot continue. The new policy,  
9 strategy, or protocol must use unambiguous language.

10 Plaintiffs have asked to review the new testing and transfer policy or protocol in  
11 advance of implementation later this month, so that if necessary we can comment on it, as  
12 has been the standard practice for years with dozens of other policy changes. Such  
13 reviews, which we will do on an expedited basis if so asked, have previously resulted in  
14 changes that reduce the risk of harm to patients. CCHCS has not indicated whether it will  
15 share the new testing and transfer policy or protocol in advance. Plaintiffs ask that the  
16 Court direct the Receiver to do so.

17 Finally, and fundamentally, the Receiver must prohibit all inter-prison transfers  
18 except those necessary for healthcare reasons or other emergencies until the new testing  
19 and transfer policy or protocol is fully implemented, piloted in a substantial way, and  
20 deemed adequate. In addition to the CIM to San Quentin transfers, Plaintiffs this week  
21 discovered that people on or about June 8th were moved from San Quentin for purely  
22 custody reasons and that one of those persons – who had tested negative six days before  
23 transfer, subsequently tested positive for COVID-19 at the new prison. When asked about  
24 this, CCHCS stated the patient is believed to have infected a nurse and two officers at the  
25

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26 <sup>3</sup> On June 17, 2020, CCHCS informed Plaintiffs that last week, it provided CDCR with  
27 recommendations to reduce the risk of COVID-19 transmission during bus transports, including  
28 limits on bus capacity, but did not know whether CDCR would adopt them.

1 new prison. In addition, CCHCS stated this week that an officer who drove patients to  
2 California Medical Facility in Vacaville tested positive for COVID-19, and those who  
3 were in the bus may have been infected. As noted above, the Receiver, for public health  
4 reasons, should prohibit all except essential transfers until it is clear that the revised testing  
5 and transfer policy or protocol is adequate.

6 **Defendants' Position:**

7 As reported in the May 27, 2020 Joint Case Management Conference Statement, on  
8 May 22, 2020, CCHCS issued a memorandum to all wardens and chief executive officers  
9 jointly signed by Connie Gipson, Director of the Division of Adult Institutions, Dr. Joseph  
10 Bick, Director of the Division of Health Care Services, and Dr. Steven Tharratt, Director  
11 of Health Care Operations and Statewide Chief Medical Executive at CCHCS, entitled  
12 "COVID 19 Pandemic – Road Map to Reopening Operations." Attached to that  
13 memorandum was a "Covid Screening and Testing Matrix for Patient Movement," which  
14 set forth direction to institutions regarding the testing and housing of inmates under  
15 particular movement scenarios. That memorandum did not provide specific time frames  
16 for the testing of inmates prior to inter-prison transfers, for instance, in circumstances like  
17 the transfers from CIM to San Quentin and Corcoran, that were discussed during the June  
18 9, 2020 Case Management Conference. As a result of the lessons learned from the CIM  
19 transfers (which are described more fully below), all inmates: (1) must be administered a  
20 COVID-19 test no more than seven days before transfer and; (2) must receive a negative  
21 test result before transfer. This modification to the transfer protocol was memorialized in  
22 an email from CCHCS's Vince Cullen to all Chief Executive Officers on June 5, 2020. A  
23 copy of this email is attached as **Exhibit B**.

24 As it pertains to the CIM transfers, on May 23, 2020, CCHCS provided the Division  
25 of Adult Institutions (DAI) with a list of 691 inmates at CIM who were deemed "medically  
26 high risk" and who had tested negative for COVID-19. CCHCS directed DAI to transfer  
27 the listed inmates out of CIM. DAI immediately started the classification process required  
28 to transfer the inmates to San Quentin and Corcoran. DAI kept CCHCS apprised of the

1 anticipated schedule for transferring the inmates, and CCHCS did not object to that  
2 schedule. CCHCS did not notify DAI that a retest would be necessary of the inmates  
3 before they were transferred, nor had CCHCS issued a general directive concerning the  
4 timing of COVID-19 tests in relation to inmate transfers. On May 28—four business days  
5 after CCHCS sent the transfer list to DAI—the transfers commenced. CCHCS suspended  
6 the transfers on June 4, 2020, when it was discovered that some of the transferred inmates  
7 tested positive for COVID-19 after they arrived at San Quentin and Corcoran. On June 5,  
8 2020, CCHCS issued a new “testing and transfer strategy” dictating that “a patient should  
9 not transfer if the date of their NEGATIVE test is past 7 days on the date of transfer. This  
10 means 7 days from the date the test was administered.” There have been no additional  
11 transfers from CIM since CCHCS suspended transfers on June 4.

#### 12 **IV. RESUMPTION OF INTAKE**

13 As reported in the parties’ June 8, 2020 Joint Case Management Conference  
14 Statement, CDCR has maintained the closure of county jail intake, with the exception of  
15 the intake of approximately 50 county jail inmates per week, for a total of 200 inmates.  
16 Four counties (Los Angeles, San Bernardino, Fresno, and San Diego) are permitted to send  
17 inmates to CDCR according to a set schedule.<sup>4</sup> Due to the number of positive COVID-19  
18 cases in Los Angeles County jails, CDCR temporarily suspended the intake of inmates  
19 from Los Angeles County jails on June 5, 2020 and replaced that intake with inmates from  
20 Kern County. After receiving assurances from Los Angeles County that it is testing and  
21 screening its inmates prior to transfer, CDCR will resume limited intake from Los Angeles  
22 County on June 24, 2020. CDCR will continue to limit county jail intake to 50 county jail  
23 inmates total per week from these same four counties through July 3, 2020. The parties  
24 discussed intake at the meet and confer on June 16, 2020 and with CCHCS on the June 17,  
25 2020 informational call.

26 \_\_\_\_\_  
27 <sup>4</sup> Should any of these four counties be unable to fulfill their quota, two other counties – Orange  
28 County and Kern County – may send people to complete the quota.

1 CCHCS has made recommendations to DAI regarding intake, including (a)  
2 providing a list of current outbreaks in county jails based on data from the Department of  
3 Public Health with a recommendation that people not be received from counties where  
4 there are outbreaks; (b) the suggestion that DAI accept on a preferential basis those people  
5 in the county jails who have recovered from the virus; and (c) recommendations about  
6 transportation procedures, such as having bus passengers masked and keeping windows  
7 open. CCHCS noted on the June 17 call that it has become apparent that custody staff in  
8 the Reception Centers will need additional protective equipment (N95 respirators).

9 **Plaintiffs' Position:**

10 Plaintiffs maintain their position that intake should be suspended until CDCR  
11 completes the process of moving medically vulnerable people to cells, until transfers can  
12 be accomplished safely, and until the population decreases to the point that social  
13 distancing can be safely practiced. Plaintiffs continue to be concerned about intake from  
14 counties with active outbreaks, including Los Angeles and San Bernardino.

15 **Defendants' Position:**

16 In the interim, CDCR is continuing to evaluate when and how it will resume more  
17 normalized county intake. It will update the Court and the parties on its future intake plans  
18 when additional information becomes available.

19 **V. STRATEGIES TO CREATE AND ENCOURAGE SOCIAL DISTANCING  
20 FOR INDIVIDUALS LIVING IN CELLS AND DORMS**

21 With respect to incarcerated persons, on Wednesday, June 10, 2020, plaintiffs  
22 provided Director Gipson a list of suggestions for creating and encouraging healthy  
23 behavior in cells and dorms, including social distancing. Plaintiffs' suggestions included:  
24 (1) talking to incarcerated people, including by consulting the Inmate Advisory Councils,  
25 conducting (distanced) town hall style meetings, and using the closed circuit television to  
26 solicit their input on these issues; (2) empowering incarcerated people to respectfully  
27 remind staff to wear their masks; (3) providing "substantial value" benefits to mark  
28 measurable compliance success, including include tablets, magazines/books, additional

1 free phone calls, and (properly distanced) group celebrations, (4) consulting with  
2 Department of Juvenile Justice officials regarding their incentive programs, and (5)  
3 consulting with CDCR staff, including staff who work in the Developmentally Disabled  
4 Program.

5 During the parties' telephonic meet-and-confer discussion on June 16, 2020,  
6 Director Gipson stated that she had communicated with the wardens regarding Plaintiffs'  
7 proposals and soliciting best practices. She noted numerous incentives that were under  
8 discussion.

9 With respect to staff, on June 11, 2020, Secretary Diaz and the Receiver jointly  
10 issued a memorandum to all custody and health care staff reminding them to adhere to  
11 cleaning and disinfection protocols, wash hands frequently, answer daily screening  
12 questions, physically distance at all times possible, and wear cloth or other approved face  
13 barrier coverings at all times (with limited exceptions). The memorandum indicates that  
14 failure to wear an appropriate face barrier covering "may result in progressive discipline."  
15 This disciplinary process is overseen by the Office of the Inspector General and discipline  
16 can range from training to counseling to dismissal according to a disciplinary matrix. A  
17 copy of this June 11, 2020 Memorandum is attached as **Exhibit C**.

18 During the first half of June, the Corrections Services staff of CCHCS conducted  
19 site visits at each of the 35 state prisons to assess compliance with social distancing  
20 guidelines, including whether staff and incarcerated people are wearing masks. According  
21 to the schedule of visits, all should have been completed by June 17, and the report should  
22 be completed on June 19, 2020.

23 **Plaintiffs' Statement:**

24 Plaintiffs welcome these efforts. We have requested the memo that Director Gipson  
25 sent to the Wardens, and will continue to monitor Defendants efforts to promote  
26 compliance with distancing guidance.

27 **Defendants' Statement:**

28 DAI continues to work with each institution to ensure that physical distancing,



1 cleaning, and other measures are appropriately implemented to ensure the health and  
2 wellbeing of both inmates and staff at each institution. However, a one-size-fits-all  
3 approach to cleaning schedules and physical distancing is not appropriate for every  
4 housing unit at every institution. Each housing unit is different and therefore, it is best left  
5 to the discretion of the wardens to determine how to implement CDCR directives  
6 pertaining to cleaning and physical distancing.

7 Director Gipson is also in the process of working with the wardens at each  
8 institution to encourage them to implement incentives for inmates who comply with  
9 cohorting principles and mask-wearing directives. Wardens have been very receptive to  
10 this directive and are in the process of meeting with Inmate Advisory Committees and  
11 health care staff to brainstorm potential incentives and are also in the process of  
12 considering suggested incentives provided by Plaintiffs' counsel.

13  
14 DATED: June 18, 2020

HANSON BRIDGETT LLP

15  
16  
17 By: /s/ Samantha Wolff

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19 SAMANTHA D. WOLFF  
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21 DATED: June 18, 2020

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24 DAMON MCCLAIN  
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Deputy Attorney General  
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1 DATED: June 18, 2020

PRISON LAW OFFICE

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Bv: /s/ Alison Hardy  
ALISON HARDY  
Attorney for Plaintiffs