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17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**  
19

20 MARCIANO PLATA, et al.,

21 Plaintiffs,

22 v.

23 GAVIN NEWSOM, et al.,

24 Defendants.  
25  
26  
27  
28

CASE NO. 01-1351 JST

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Date: October 7, 2020

Time: 10:00 a.m.

Crtrm.: 6, 2nd Floor

Judge: Hon. Jon S. Tigar

1 The parties submit the following joint statement in advance of the October 7, 2020  
2 Case Management Conference.

3 **I. POPULATION REDUCTION**

4 *Plaintiffs' Position:* Population reduction remains necessary to minimize the risk of  
5 harm from COVID-19, particularly among those at increased risk of harm if infected. As  
6 previously explained (see ECF No. 3417 at 2:14-3:2), the overall CDCR population  
7 reduction since March, while certainly helped by early release programs, has primarily  
8 resulted from natural releases and the suspension and limitation of intake. As intake  
9 increases, CDCR's total population is likely to increase as well.<sup>1</sup>

10 This is especially so since the number and rate of early releases is dropping  
11 dramatically. As of August 5, approximately four weeks after the July 10 programs were  
12 announced, approximately 4,420 people had been released early from the prisons and  
13 camps. See ECF No. 3417 at 1:14-4:19. In contrast, in the subsequent eight weeks (i.e., as  
14 of September 30, the most recent date Defendants have formally provided data to Plaintiffs  
15 about population reduction efforts), 1,544 were released early.<sup>2</sup> And, as Defendants state  
16 below, both the July 10 program that considered early release for certain people at certain  
17 prisons if within 365 days of release, and the program to consider early release for those  
18 considered at high risk for medical harm, are essentially over. As such, the number of  
19 early releases will continue to dwindle.

20 Further, Defendants' final data confirms the program to consider release of those at  
21 increased risk of harm if infected with COVID-19 resulted in release for only a very small  
22 number of those eligible. Within that program, Defendants report below that of the 6,599  
23

24 \_\_\_\_\_  
25 <sup>1</sup> CDCR last week reported that nearly 8,000 people in county jails are awaiting  
26 transport to its reception centers.

27 <sup>2</sup> Defendants below state that as of September 30 there were a total of 5,964 early  
28 releases under the July 10 programs.

1 they say were eligible, only 1,335 were actually considered.<sup>3</sup> Of the 1,335 considered,  
2 only 45 were approved for release, with an additional 12 recommended to the Governor for  
3 clemency. Thus, even if all are released, the program will have resulted in release of less  
4 than one percent of those eligible, and only approximately four percent of those actually  
5 considered.

6 In addition, on September 25, Defendants informed Plaintiffs that although CCHCS  
7 on September 1 revised its COVID-19 risk factors, thus presumably increasing the number  
8 of people with a Weighted COVID Risk Score of four or higher – the threshold for  
9 considering a person for early release under the medical risk program – CDCR would not  
10 determine who these people are or consider them for early release. As was coldly stated,  
11 with no explanation, “there are no plans to revise the original group.” This is deeply  
12 disappointing, and clear evidence that the early release program for those most at risk was  
13 a one-time gesture, rather than a sustained action to reduce the risk to those most  
14 susceptible to severe consequences from COVID-19.

15 Finally, even with the release programs, thousands remain in common air space  
16 congregate setting housing units which are especially susceptible to massive COVID-19  
17 outbreaks. As further discussed below, the six CDCR prisons with the largest number of  
18 total confirmed COVID-19 cases—all of which have had more than 1,000 such cases, with  
19 one of those having almost 3,000—all primarily have common air space congregate setting  
20 housing units. *See* Section IV.A.

21 *Defendants’ Position:* Since the start of the COVID-19 public health crisis, 22,714  
22

23 <sup>3</sup> Defendants list several reasons why people were not considered, but do not provide  
24 the number of people excluded due to each listed reason. It appears many of the listed  
25 reasons for why people were not considered, especially regarding those with indeterminate  
26 sentences, are factors added after the original criteria were announced. Defendants also  
27 say that some who could have been considered under the medical high risk program were  
28 released under the 180 and 365-day programs, but do not provide a count; as of late  
August, there were only 120 such releases.

1 incarcerated people were released from CDCR institutions and camps as of September 30,  
 2 2020.<sup>4</sup> CDCR experienced a 19.35% decrease in population during this time period.<sup>5</sup>  
 3 Between July 1 and September 30, 5,964 people were released from institutions and camps  
 4 as a result of the COVID-19 early-release programs Defendants announced on July 10.<sup>6</sup>  
 5 This represents 296 more early releases than those reported in the September 16 case  
 6 management conference statement. (ECF No. 3449 at 3:24-4:1.) An additional 7,852  
 7 people were released in accordance with their natural release date during this time period.  
 8 CDCR's total population remains below 100,000.

9 Consistent with the timeline reported in previous case management conference  
 10 statements, on September 30, CDCR completed its review of 6,599 people<sup>7</sup> who were  
 11 identified as being eligible for early-release consideration in the COVID-19 high-risk  
 12 medical early release program announced on July 10.<sup>8</sup> Of these, approximately 2,444 were  
 13 serving determinate sentences. The Secretary reviewed a total of 1,284 individual  
 14

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15  
 16 <sup>4</sup> This figure is calculated by taking the difference between the total population in  
 17 institutions and camps on February 26, 2020 and September 30, 2020. Weekly population  
 18 reports can be found at [https://www.cdcr.ca.gov/research/weekly-total-population-report-  
 19 archive-2020/](https://www.cdcr.ca.gov/research/weekly-total-population-report-archive-2020/).

18 <sup>5</sup> See previous footnote.

19 <sup>6</sup> See ECF No. 3389 at 2:4-5:4 and [https://www.cdcr.ca.gov/covid19/expedited-  
 20 releases/](https://www.cdcr.ca.gov/covid19/expedited-releases/) for details regarding CDCR's COVID-19 early-release program announced on  
 21 July 10, 2020.

21 <sup>7</sup> The court-appointed federal Receiver, who oversees healthcare in the state's  
 22 prisons, identified approximately 6,500 incarcerated people as being medically high-risk  
 23 for COVID-19. These people were identified as being eligible for individual early-release  
 24 consideration, and not part of the rolling releases. See  
 25 <https://www.cdcr.ca.gov/covid19/frequently-asked-questions-expedited-releases/>.

26 <sup>8</sup> See ECF No. 3436 at 3:26-5:3 for a detailed discussion of CDCR's process for  
 27 evaluating individual, determinately sentenced, medically high-risk people for early  
 28 release through the high-risk medical program announced on July 10, including factors  
 considered. Exhibit A of the same filing includes examples of actual individual files  
 reviewed by the Secretary. See also ECF No. 3449 at 5:1-19 for a detailed discussion of  
 the State's process for evaluating indeterminately sentenced, medically high-risk people  
 for early release on an individual basis through the high-risk medical early-release cohort  
 announced on July 10.

1 summaries for determinately sentenced people, approved 45 for release, and did not  
2 approve 1,239. The remaining 1,160 did not receive individual reviews for one of the  
3 following reasons: they were released through either the 180-day or 365-day early-release  
4 program, their earliest possible release date was within 30 days, they were no longer  
5 considered high-risk as a result of a change in their COVID-19 risk score, they were  
6 released in accordance with their natural parole or discharge date, or were assessed to have  
7 a high risk of committing future violence.

8       Of the total 6,599 medically high-risk people eligible for early-release consideration  
9 in the COVID-19 high-risk medical program, 4,155 were serving indeterminate sentences.  
10 As reported in the previous case management conference statement, the process of  
11 reviewing indeterminately sentenced people deemed eligible for early-release  
12 consideration involved a few more steps than that of eligible determinately sentenced  
13 people. (ECF No. 3449 at 5:1-4.) Like determinately sentenced people, indeterminately  
14 sentenced people received an initial review before receiving further consideration from the  
15 Secretary—a process approved by the Secretary. As a result of this initial review, 4,104  
16 did not receive further consideration from the Secretary because they did not have a valid  
17 risk assessment on which CDCR could preliminarily assess whether the individuals could  
18 safely be released,<sup>9</sup> had a valid risk assessment indicating a moderate or high risk for  
19 future violence, were found to pose a current and unreasonable risk to public safety at their  
20 last parole hearing, were already scheduled for parole hearings,<sup>10</sup> or were released in

21 \_\_\_\_\_  
22 <sup>9</sup> These risk assessments are done in the normal course of business for  
23 indeterminately sentenced people in conjunction with a parole consideration hearing. A  
24 forensic psychologist performs these risk assessments. The psychologist reviews each  
25 person's file, conducts a detailed interview of each person, usually about two hours each,  
26 and drafts a report. By its nature, the process cannot be completed quickly.

27 <sup>10</sup> When a parole hearing is scheduled, relevant stakeholders including victims or  
28 families of victims and local district attorneys are informed of the hearing, and attorneys  
are assigned to incarcerated people. CDCR determined that these processes should move  
forward because they provide an opportunity for release and maintain consistency in the

1 accordance with their natural release date. (ECF No. 3449 at 5:4-12.)

2       Following this initial review, 51 individual summaries were prepared for  
3 indeterminately sentenced people deemed eligible for further early-release consideration.  
4 After reviewing each of these summaries, the Secretary referred 12 cases of  
5 indeterminately sentenced people to the Governor with the recommendation that the  
6 Governor grant them clemency, and did not refer 39 people for early release.<sup>11</sup> As of  
7 September 30, CDCR completed the review of medically high-risk people eligible for  
8 early-release consideration through the COVID-19 high-risk medical program. CDCR  
9 currently does not have plans to expand the original list of approximately 6,500. The  
10 releases of approved people will continue to be processed until they are complete.

11       Additionally, as reported in the July 15 case management conference statement and  
12 CDCR's July 10 press release, early releases through the 365-day COVID-19 early-release  
13 cohort were expected to "be screened on a rolling basis until CDCR determines such  
14 releases are no longer necessary." (ECF No. 3389 at 3:14-15 and

15 [https://www.cdcr.ca.gov/covid19/expedited-releases/.](https://www.cdcr.ca.gov/covid19/expedited-releases/)) The institutions from which  
16 eligible people were screened for release originally included San Quentin State Prison  
17 (SQ), Central California Women's Facility (CCWF), California Health Care Facility  
18 (CHCS), California Institution for Men (CIM), California Institution for Women (CIW),  
19 California Medical Facility (CMF), Folsom State Prison (FOL), and Richard J. Donovan  
20 Correctional Facility (RJD). (ECF No. 3389 at 3:5-9.) On August 7, CDCR added Mule  
21 Creek State Prison (MCSP); California State Prison, Los Angeles County (LAC);  
22 California State Prison, Solano (SOL); and California Men's Colony (CMC) to this list.  
23 (ECF No. 3417 at 6:18-20.) In the August 11 case management conference statement,

24 Defendants announced that these releases were expected to conclude on September 30,

25 \_\_\_\_\_  
26 process. Moreover, full parole considerations are preferred to early-release reviews.

27 <sup>11</sup> As reported in the previous case management conference statement, after selecting  
28 eligible candidates, the Secretary forwards cases recommended for early-release to  
Governor Newsom. (ECF No. 3449 at 5:16-17.)

1 2020. (*Id.* at 6:22-25.) As an update, Defendants report that the final cohort within the  
2 365-day COVID-19 early-release program has been identified and will be evaluated for  
3 early release eligibility. This early-release program will be suspended once these releases  
4 have been completed.<sup>12</sup> For the time being, the rolling early releases of eligible people—  
5 including medically high-risk people—will continue through the 180-day COVID-19  
6 early-release program.

7 CDCR continues to give special consideration to medically high-risk people whose  
8 cases may warrant early release. (*See, e.g.*, ECF No. 3449 at 5:20-6:11, ECF No. 3436 at  
9 5:4-16, and ECF No. 3427 at 4:4-13.) As with every release, each early-release evaluation  
10 involves a delicate balance of many factors weighing both in favor of and against early  
11 release, including the individual circumstances of each incarcerated person reviewed and  
12 the risk that release would pose to public safety. The ongoing public health crisis has  
13 given rise to a number of considerations that weigh in favor of early release that did not  
14 exist before, but it did not eliminate the need to balance these factors with the risk to public  
15 safety.

16 CDCR, in its discretion, implemented the early-release programs described above as  
17 an added safety measure at a time when more comprehensive COVID-19-related policies  
18 were still being developed. Since then, CDCR adopted significant safety measures to  
19 reduce the spread of COVID-19, including, as described in sections below, a drastic  
20 reduction in intake from county jails, setting aside designated quarantine and isolation  
21 space, and implementing enhanced policies regarding personal protective equipment,  
22 movement of incarcerated people, and COVID-19 testing of staff and incarcerated people.  
23 CDCR continues to evaluate, improve, and supplement these policies in close coordination  
24 with the Receiver.

25 CDCR continues to consider and implement additional measures to keep its  
26

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27 <sup>12</sup> Plaintiffs monitor early releases in each of the COVID-19 early-release programs  
28 announced on July 10 through data Defendants produce to them twice per month.

1 population safe during the COVID-19 public health crisis. For example, CDCR previously  
2 awarded twelve weeks of positive programming credit to eligible incarcerated people to  
3 help mitigate the impact on access to programs and credit earnings due to COVID-19.<sup>13</sup>  
4 To ensure all eligible people receive these credits, on October 1, CDCR starting working  
5 with each county jail in which incarcerated people await transfers to CDCR institutions to  
6 identify people eligible to receive the twelve-week credit, and to award the credit. In  
7 instances where the twelve-week credit is applied and makes a person eligible for  
8 immediate release, CDCR will provide a release memorandum to the county jail with  
9 instructions for the person to report to the nearest parole office for post-release assignment.

## 10 II. TESTING AND TRANSFER PROTOCOLS

11 *Plaintiffs' Position:* Large numbers of patients are now transferring between  
12 prisons, with testing and quarantining to reduce the risk of COVID-19 transmission  
13 governed by CCHCS's August 19 "Movement Matrix." CDCR reports there were 126  
14 such transfers between September 14 and 20, and 748 between September 21 and 27.

15 CCHCS has rejected our suggestion that staff complete a checklist before patients  
16 get on a transportation vehicle so as to minimize the risk that a person is moved without  
17 the necessary quarantine period and a timely negative test. Instead, CCHCS is working on  
18 what it terms a "Transfer Registry" that apparently will include information for each  
19 transferred patient regarding quarantine and COVID-19 test dates and results. While this  
20 will be useful, it is unclear when this registry will be fully operational. We believe interim  
21 measures are needed now so that medical staff checks that Movement Matrix requirements  
22 have been met before each person is moved.

23 In that regard, we most recently suggested that each prison's receiving and release  
24 nurses check for quarantine and timely testing information before a transfer. Those nurses  
25 have long been required to, among other things, interview each patient before a transfer,

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26  
27 <sup>13</sup> See ECF 3389 at 3:16-4:11 and [https://www.cdcr.ca.gov/covid19/expedited-](https://www.cdcr.ca.gov/covid19/expedited-releases/)  
28 [releases/](https://www.cdcr.ca.gov/covid19/expedited-releases/) for eligibility criteria.



1 verify required medications and medical equipment is on hand, and ensure that all contents  
2 of what's called the "transfer envelope" are present (see Health Care Department  
3 Operations Manual 3.1.9 at 5 [[https://cchcs.ca.gov/wp-](https://cchcs.ca.gov/wp-content/uploads/sites/60/HC/HCDOM-ch03-art1.9.pdf)  
4 [content/uploads/sites/60/HC/HCDOM-ch03-art1.9.pdf](https://cchcs.ca.gov/wp-content/uploads/sites/60/HC/HCDOM-ch03-art1.9.pdf)]). CCHCS apparently will not do  
5 this. Given the tragic disaster at San Quentin caused by transfers to that prison of patients  
6 with active COVID-19, CCHCS must use all available safeguards to minimize the risk of  
7 such harm occurring again.

8 *Defendants' Position:* The current iteration of the movement matrix went into effect  
9 on August 21, 2020. DAI, CCHCS, and leadership teams at all institutions held a  
10 statewide conference call to conduct a detailed discussion of each section of the movement  
11 matrix. The statewide call also included a question-and-answer session. As explained  
12 during that call, movement will be limited and controlled, and must be pre-approved by  
13 CDCR headquarters, which is working in collaboration with CCHCS (including Mr.  
14 Cullen and Dr. Bick). More meetings, conference calls, and training sessions are planned  
15 to help staff understand and implement the movement matrix. Additionally, there is  
16 continued enforcement of the safety protocols requiring all county staff and incarcerated  
17 people arriving to CDCR on intake buses to wear N95 masks. In fact, as discussed below,  
18 CDCR refused to accept inmates from an intake bus that was not in compliance with this  
19 safety measure. Also, Plaintiffs raised the issue of patients who were formerly infected  
20 with COVID-19 and now resolved being excluded from further testing. During a call with  
21 Plaintiffs on September 25, 2020, CCHCS clarified that these people are not excluded  
22 from testing, but are instead included in the groups of people who are randomly tested at  
23 each prison. Finally, Plaintiffs request that a paper checklist be completed and passed  
24 through multiple staff members with each transfer. Instead, CCHCS will use a registry to  
25 track all transfer information. This registry will be easily accessible, updateable, and will  
26 contain comprehensive information.

27 //

28

1 **III. INTAKE**

2 *Plaintiffs' Position:* Plaintiffs continue to maintain that intake should be closed  
3 until all prisons have set aside adequate space for quarantine and isolation, and Defendants  
4 have evaluated the efficacy of the Movement Matrix. Nevertheless, CDCR resumed intake  
5 six weeks ago, on a limited basis. The Parties met and conferred on September 29 to  
6 review that process and consider lessons learned.

7 Currently, CDCR has three reception centers, at Wasco State Prison, North Kern  
8 State Prison (NKSP), and Central California Women's Facility (CCWF). At the  
9 September 29 meet and confer, CDCR's Director of the Division of Adult Institutions,  
10 Connie Gipson, explained that she meets weekly with the leaders at those prisons to review  
11 the process for the previous week, to evaluate the amount of space available at each prison,  
12 and to consider each Reception Center's capacity to admit people the following week.  
13 Each week, this group determines how much space is available, what the processing  
14 capacity is, and how many people should be admitted for the following week. Defendants  
15 indicated that they decide how many people can be admitted the following week based on  
16 the actual number of beds currently open at each Reception Center. For the week of  
17 October 5th, Defendants announced on Thursday October 1st that NKSP, Wasco, and  
18 CCWF would accept a total of 240 people from three counties. Defendants report that  
19 there are currently approximately 7900 men and women in county jails awaiting transfer to  
20 CDCR.

21 *Defendants' Position:* During the week of September 20, 2020, CDCR accepted a  
22 total of 143 incarcerated persons from county jails as follows:

23

Number of Incarcerated Persons	Sending County	Receiving Institution
143	Orange	NKSP

24  
25  
26

27 CDCR accepted a total of 232 incarcerated persons from the following county jails during  
28

1 the week of September 27, 2020:

2 <b>Number of Incarcerated Persons</b>	<b>Sending County</b>	<b>Receiving Institution</b>
3 30	Los Angeles	CCWF
4 64	Los Angeles	Wasco State Prison
5 138	San Diego	North Kern State Prison

6  
7 CDCR has authorized intake from the following county jails during the week of October 4,  
8 2020:

9 <b>Number of Incarcerated Persons</b>	<b>Sending County</b>	<b>Receiving Institution</b>
10 30	Riverside	CCWF
11 120	Stanislaus	Wasco State Prison
12 90	San Diego	North Kern State Prison

13  
14 CDCR continues to work collaboratively with the counties to ensure compliance  
15 with all transfer matrix requirements. For instance, the Receiving and Release Sergeants at  
16 Wasco and North Kern verify what type of mask both incarcerated persons and staff wore  
17 at the time they disembarked from the transfer busses and question individuals regarding  
18 their wearing of masks during transport in order to ensure that all transferees and staff  
19 wear N95 masks at all times during transfer. This process is working. One county sent, on  
20 three different days, three separate busloads of incarcerated persons to North Kern the  
21 week of September 20, 2020. Two of the buses arrived with staff and riders properly  
22 wearing N95 masks and were processed at the reception center. Incarcerated persons on  
23 the third bus, however, were transported to North Kern in regular cloth masks, and the  
24 Release Sergeant and Warden refused to receive the incarcerated persons for intake and  
25 instructed the bus to return them to the county.

26 As reported in the last joint CMC statement, CDCR will continue to work with the  
27 California Sheriffs' Association to permit intake from the counties with the greatest need,  
28

1 determined based on a number of factors, including population density, proximity to  
2 reception centers, and impact from the wildfires.

3 CDCR and CCHCS met and conferred with the PLO on the topic of intake on  
4 September 29, 2020.

5 **IV. SETTING ASIDE SPACE FOR QUARANTINE AND ISOLATION AND COURT**  
6 **ORDER REGARDING SAME (ECF NOS. 3401)**

7 *Plaintiffs' Position:*

8 **A. Set Aside of Quarantine and Isolation Space**

9 This Court previously ordered Defendants to identify and vacate COVID-19  
10 quarantine and isolation space at every prison, to be used in the event of an outbreak. ECF  
11 No. 3401 at 3-4. Additionally, the Court ordered the parties and the Receiver to monitor  
12 the space reserves, and determine whether the space identified by CDCR was sufficient, or  
13 whether they should be modified at particular prisons. *Id.* at 4-5.

14 On September 16, pursuant to the process laid out in the Court's order, Plaintiffs  
15 requested that the Receiver consider whether the bed reserve levels at particular prisons  
16 should be modified. Among other concerns, we raised the issue that some prisons had  
17 failed to designate appropriate spaces for quarantine. In their recommendations for setting  
18 aside appropriate isolation and quarantine space at each prison, the Public Health  
19 Workgroup stated that people exposed to COVID-19 "must be separated from each other  
20 in single cells with solid doors," to stop the virus from spreading among those in  
21 quarantine. Yet some prisons have not designated enough or, in some cases, *any* cells with  
22 solid doors (or the equivalent of such) for quarantine. Thus, as of October 2,  
23 approximately 2,300 people exposed to COVID-19 remained quarantined in large dorms or  
24 tiered cell blocks with non-solid doors, including approximately 800 in dorms at Avenal  
25 State Prison, 750 in dorms at California Rehabilitation Center, 350 in dorms at California  
26 Institution for Men, and 450 in tiered cell blocks at Folsom State Prison.

27 We also requested modifications where a prison had not designated separate  
28

1 isolation and quarantine space for people classified as general population and as sensitive  
2 needs. We believe actual or serious threats of harm will be suffered by many of those  
3 classified as sensitive needs if housed in the same unit as those who are not. Further, many  
4 classified as general population may refuse to house with those who are classified as  
5 sensitive needs. Thus, if the two populations are not housed separately, CDCR and  
6 CCHCS face a very real possibility that large numbers of people will refuse to be tested  
7 and/or refuse to be moved to the designated isolation and quarantine space, seriously  
8 hampering the prison's ability to control the spread of the virus. Some prisons have  
9 appropriately recognized this risk and designated separate spaces for each group; we  
10 requested the remaining prisons housing both populations do the same.

11 We also raised the concern that many prisons had only identified one building for  
12 both quarantine and isolation purposes, and requested that each of these prisons either (a)  
13 identify at least one additional quarantine and isolation building or (b) explain how  
14 quarantine and isolation patients would be housed safely in the single building and provide  
15 a plan for how the groups will be kept separate, including for purposes of access to yard,  
16 dayroom, showers, and phones, and receiving medications and meals.<sup>14</sup>

17 The Receiver has yet to respond to our September 16 request for modifications.

18 On Friday, October 2, the *Coleman* Special Master, *Armstrong* Court Expert, and  
19 *Plata* Receiver requested a meeting with counsel for Plaintiffs and Defendants in each case  
20 to discuss quarantine and isolation issues, recognizing that there may be overlap between  
21 all three cases in this conversation. The meeting took place Monday, October 5. The  
22 parties discussed the allocation of quarantine space in the prisons that have limited cell  
23 space, but came to no agreements about how to address the shortfall of adequate and  
24 available space at certain prisons.

25 It is undisputed that the CDCR's COVID-19 statistics show assignment to a  
26 \_\_\_\_\_

27 <sup>14</sup> We also raised a number of specific concerns and questions about plans for  
28 particular prisons.

1 dormitory or housing unit with shared air space exposes people to serious harm and the  
2 risk of harm from COVID-19. Six prisons have had outbreaks that have resulted in more  
3 than 1000 people becoming infected with COVID-19:

- 4 • Avenal State Prison (ASP) – 2838 people;
- 5 • San Quentin State Prison (SQ) – 2239 people;
- 6 • California Rehabilitation Center (CRC) – 1486 people;
- 7 • Chuckawalla Valley State Prison (CVSP) – 1392 people;
- 8 • California Institution for Men (CIM) – 1349 people; and
- 9 • Folsom State Prison (FSP) – 1316 people.

10 Tragically, 63 of the 69 incarcerated people who have died from COVID-19 in  
11 CDCR were incarcerated in these six prisons. Each of those prisons houses large numbers  
12 of people in dormitories or tiered cell blocks with non-solid doors. Although the Public  
13 Health Experts and all parties agree that quarantine should take place in a single cell,  
14 behind a solid door, none of the six prisons has enough available celled housing with solid  
15 doors to adequately quarantine people during an outbreak. Not surprisingly, at many of  
16 these prisons, the outbreaks continue: in the past two weeks, 539 new confirmed cases  
17 have been identified at CRC, 311 at ASP, and 163 at FSP. Essentially, the dorms are on  
18 fire, and the Defendants have no plan to evacuate the people who remain in the fire's path.

#### 19 **B. Development of Policies Related to Quarantine and Isolation**

20 As reported at the last Case Management Conference, Plaintiffs have asked the  
21 Receiver to consider developing two policies related to quarantine and isolation. First, we  
22 asked that guidance be provided regarding when people should be quarantined or isolated  
23 in a space other than the spaces set aside for that purpose. Second, we have asked that  
24 CCHCS and CDCR develop procedures and time-frames for placing patients in isolation or  
25 quarantine, once positive test results are received, or information is received regarding an  
26 exposure. *See* ECF No. 3448 at 12-13.

27 On September 29, we requested an update on these two requests. The Receiver  
28

1 suggested that this may be discussed during the October 5 meeting on quarantine and  
2 isolation with the *Coleman* and *Armstrong* representatives, but the issue was not discussed.  
3 We will follow up with CCHCS about these requests.

4 **C. Monitoring Use of Quarantine and Isolation Space**

5 Plaintiffs must be able to adequately monitor the use of quarantine and isolation  
6 space, including to ensure that incarcerated people are not placed at risk of harm and so  
7 that we can determine whether to request that further space be set aside. CCHCS has  
8 developed a template—called an Outbreak Management Tool—that prisons will use on a  
9 daily basis to report on matters related to COVID-19, including information on numbers  
10 and housing locations of patients in quarantine and isolation. We sent CCHCS comments  
11 on a draft version of the template, and were told on October 2 that CCHCS is in the  
12 process of automating the tool, and that completed copies of these daily reports will be  
13 provided to Plaintiffs once they are in use at the prisons.

14 *Defendants' Position:* CDCR has already set aside vast quantities of isolation and  
15 quarantine space and has continued to increase the amount of reserved space at its prisons.  
16 As discussed in the last case-management statement, CDCR requested additional time to  
17 prepare identified quarantine and isolation space at five prisons to allow time for the safe  
18 transfer of inmates to other locations. The Court granted the requested extensions to  
19 complete the transfers and prepare the isolation and quarantine spaces. (ECF No. 3455.)  
20 CDCR has made every effort to expedite this project. As of the filing of this statement, the  
21 identified spaces at three of the five remaining prisons—Avenal State Prison, Chuckawalla  
22 Valley State Prison, and California Medical Facility—are vacated and prepared for  
23 occupancy. Only two outstanding prisons must still be completed—California State  
24 Prison-Los Angeles County and Valley State Prison.

25 Plaintiffs have submitted a number of concerns about current isolation and  
26 quarantine reserves to the Receiver and the parties await the Receiver's response.  
27 Defendants anticipate that the Receiver and the parties will continue to meet and confer  
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1 about those issues and others related to quarantine and isolation space. In fact, the  
2 Receiver's office arranged a meeting on Monday, October 5, for the parties in Plata,  
3 Coleman, and Armstrong to further discuss isolation and quarantine issues with the  
4 Receiver, the Coleman Special Master, and the Armstrong Court Expert.

5 **V. SAFELY HOUSING MEDICALLY VULNERABLE PEOPLE**

6 *Plaintiffs' Position:* CDCR continues to house thousands of people who, based on  
7 age and/or their medical condition, are particularly vulnerable to severe illness or death  
8 from COVID-19 in large congregate living areas.

9 CDCR has agreed to work with CCHCS to offer those who are medically high risk  
10 and living in dorms to move to celled housing, at prisons with available cells. CDCR and  
11 CCHCS have been offering these moves in stages, starting with those at highest risk. They  
12 reported last week that they identified a group of 267 people who, based upon their high  
13 risk status, could qualify to transfer from their dorm to celled housing. Of that group,  
14 however, they did not offer moves to those housed at the California Medical Facility,  
15 because that prison needed all the cells it had available to set aside space for quarantine  
16 and isolation. They also did not offer moves to patients in dorms at the California Health  
17 Care Facility, Valley State Prison, or Central California Women's Facility, because those  
18 prisons lacked enough celled housing to offer safer housing to those in dorms. This left a  
19 total of 123 people in the group who were offered celled housing.

20 In the last Joint Case Management Conference Statement, we highlighted that, of  
21 the 36 people that Defendants initially identified as having "super high" weighted COVID  
22 risk scores, 19 could not be offered celled housing because there were no appropriate and  
23 accessible cells available at their prisons. We raised the concern that CDCR's inability to  
24 accommodate more than half of the people deemed appropriate for celled housing suggests  
25 that the prisons remain overcrowded. This week, Defendants once again report that they  
26 are not able to offer celled housing to many medically vulnerable people because they lack  
27 the space to do so. Overcrowding remains a serious problem in CDCR when medically  
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1 appropriate housing is not available to people who are at serious risk of harm.

2       According to Defendants, of the 123 who were offered celled housing, 19 people  
3 accepted, and 104 decided to remain in their dorm. Although a relatively small number of  
4 people accepted the offer to move, those who did move have taken an important step  
5 towards reducing their risk of harm, and thus we support the continuation of this process to  
6 the extent that there are additional people in dorms who might benefit from a transfer to a  
7 cell with a solid door to reduce their risk of harm from COVID-19. We also intend to  
8 check with at least some of those who are said to have refused a move to determine if  
9 adequate education was provided. Finally, Plaintiffs will continue to confer with public  
10 health experts to identify further measures that may be employed to protect medically  
11 vulnerable people who remain in CDCR's dorms.

12       *Defendants' Position:* Defendants remain committed to working with the Receiver  
13 to facilitate movements of medically high-risk patients from dorms to cells, or any other  
14 movements, to safely house medically high-risk patients when such movement is  
15 recommended and approved by the appropriate public health and corrections experts.

## 16 **VI. COVID-19 TESTING**

### 17 **A. Staff Screening and Testing**

18       *Plaintiffs' Position:* CCHCS took over authority for staff COVID-19 testing in  
19 August, and on September 14, distributed its draft "Employee Testing Guidance" to the  
20 parties. Plaintiffs provided comments to CCHCS on September 23. On October 2,  
21 CCHCS said it had reviewed our comments and would be providing responses, as well as a  
22 revised version of the Testing Guidance, the following week. CCHCS also reported that  
23 they are in the process of hiring additional nursing staff at each prison to carry out the  
24 testing and tracing required by the plan, and that it anticipated the plan would be  
25 implemented at all prisons within the next couple of months. Finally, CCHCS is working  
26 to transfer all of the employee testing data from CDCR to CCHCS, and anticipates being  
27 able to create and produce regular reports on employee testing. CCHCS explained the  
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1 reports for September would be available this week, and Plaintiffs have requested to  
2 receive copies for certain prisons once available. We appreciate the steps CCHCS is  
3 taking to implement an effective staff testing program, but regret that such necessary  
4 action was not taken by CDCR or CCHCS sooner.

5       Regarding the screening of staff at entrances, as described in prior Joint Case  
6 Management Conference Statements, the Office of the Inspector General in August  
7 reported significant problems with CDCR's COVID-19 screening process for individuals  
8 entering a prison. *See* ECF No. 3427 at 14-15; ECF No. 3436 at 18-19; Office of the  
9 Inspector General, *COVID-19 Review Series, Part One: Inconsistent Screening Practices*  
10 *May Have Increased the Risk of COVID-19 Within California's Prison System* (August  
11 2020), available at: [https://www.oig.ca.gov/wp-content/uploads/2020/08/OIG-COVID-19-](https://www.oig.ca.gov/wp-content/uploads/2020/08/OIG-COVID-19-Review-Series-Part-1-Screening.pdf)  
12 [Review-Series-Part-1-Screening.pdf](https://www.oig.ca.gov/wp-content/uploads/2020/08/OIG-COVID-19-Review-Series-Part-1-Screening.pdf). We requested CCHCS and CDCR inform us of the  
13 steps they would take to respond to the issues identified in the OIG's report. On  
14 September 25, CCHCS explained it would issue a memorandum standardizing entrance  
15 screening procedures at all prisons, and provided a draft to the parties. Plaintiffs provided  
16 written comments to CCHCS on September 28. On October 2, CCHCS said it had  
17 reviewed our comments and would be issuing the final memorandum this week.

18       *Defendants' Position:* On September 14, the Receiver's Office shared the employee  
19 testing guidance with the parties and requested comments, if any, by September 21.  
20 CDCR continues working closely with CCHCS to maintain the current staff testing  
21 procedures and to ensure a smooth and easy transition of the staff testing responsibilities to  
22 CCHCS. CDCR also remains committed to continuing to work with CCHCS to answer  
23 any questions Plaintiffs might have about the status of and processes for staff testing until  
24 the transition to CCHCS has been completed.

## 25       **B. Testing Incarcerated Population**

26       *Plaintiffs' Position:*  
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1                   **1. Patient Testing Policies**

2           After our initial requests in June, CCHCS said it would review its patient COVID-  
3 19 testing policy as part of its review of testing protocols applicable to transfers. We  
4 understood CCHCS would consider our concern that on key matters, such as serial  
5 retesting requirements during an outbreak, and the testing of incarcerated people who have  
6 frequent interaction with staff due to job assignments, the current guidance uses  
7 discretionary not mandatory language. In late August, CCHCS said it had been meeting to  
8 consider revisions to its patient testing guidelines, and that any revisions would be shared  
9 with us. On September 11, it said there was no further update. On October 2, it made  
10 clear that no revisions are forthcoming, and that it believed that closer monitoring and  
11 more frequent reporting of testing strategies at the prison would be as effective as new  
12 mandates. We do not believe that policy mandates and more rigorous reporting and  
13 monitoring are mutually exclusive. We further believe the if mandates were in place, the  
14 months-long failure to implement serial re-testing at California Institution for Men,  
15 discussed below at Part VII, would have been addressed long ago.

16                   **2. Reports and Monitoring of Serial Retesting**

17           CCHCS says that due to other priorities, including the Transfer Registry that will  
18 support the Movement Matrix, it has not yet re-started work on developing metrics and  
19 reports regarding patient COVID-19 retesting. We believe it is essential that CCHCS, as  
20 we understand it is doing for its Employee Testing program, develop a reliable and  
21 accurate means to report on percentages of patients re-tested when such is ordered as part  
22 of a public health response to an outbreak. We will continue to ask about this matter.

23                   **3. Notification to Patients of Test Results**

24           CCHCS on October 2 confirmed that it had developed and said it will implement  
25 standardized templates notifying patients of and educating them on test results, and is now  
26 working on automating the patient notifications for use with the Electronic Health Record  
27 System. CCHCS said it would begin using them “soon.” Although we have not yet seen  
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1 the templates to be used, we very much appreciate that CCHCS, after its early August  
 2 rebuffing of the idea of standardized language, will use templates, especially since health  
 3 records continue to show disparate, sometimes confusing, and, with regard to education,  
 4 mostly inadequate notifications to patients. We also very much appreciate the Receiver on  
 5 September 1 identified this as a very high priority. We hope the matter is fully resolved by  
 6 the next Case Management Conference.

#### 7 **VII. PRISON-SPECIFIC UPDATES**

8 *Plaintiffs' Position:* Preliminarily, weekly phone calls with CCHCS's four  
 9 Regional Healthcare Chief Executive Officers (CEOs) regarding COVID-19 outbreak  
 10 management at the prisons have begun (three have been held, and the next is scheduled for  
 11 October 9). These calls are monitored by senior CCHCS executives. The calls have been  
 12 very useful, including because they permit us to learn important details about what is or is  
 13 not being done in the prisons, and in certain cases result in the focusing of attention on  
 14 matters of concern.

15 For example, on October 2, we discussed the lack of a strategy of serial re-testing of  
 16 previously negative-for-COVID patients at California Institution for Men (CIM). The lack  
 17 of such testing, which Plaintiffs first asked to be done in June, was deeply concerning  
 18 given the continuing massive outbreak at the prison, the huge number of high acuity  
 19 patients it houses, the 23 COVID-related deaths among the population, and the fact that  
 20 serial re-testing has been done for months or weeks at other prisons, including San Quentin  
 21 and Folsom. We heard no adequate explanation for why CIM was not doing serial re-  
 22 testing, but also received the firm impression that CCHCS executives would promptly fix  
 23 this very unfortunate problem.<sup>15</sup>

24  
 25 \_\_\_\_\_  
 26 <sup>15</sup> The CCHCS executives included a registered nurse with extensive correctional  
 27 health care executive experience, both in and out of CDCR, who last week began in a  
 28 newly created job position, a primary duty of which is the supervising of the Regional  
 Healthcare CEOs.

**VIII. UPDATES ON MEDICAL CARE MATTERS NOT DIRECTLY RELATED TO COVID-19**

*Plaintiffs' Position:* On August 13, more than seven weeks ago, we asked CCHCS about matters related to Medication Assisted Treatment (MAT) for substance use disorder, including the substantial backlog of patient appointments. A response was provided on October 5. It indicated, consistent with the Receiver's October 1 report to Court (*see* ECF No. 3417 at 11-12) that while approximately 4,700 are receiving MAT, more than 6,000 are awaiting the necessary addiction medicine appointment to be considered for such an order. The response also indicated that more than 80% of those appointments are overdue.

A letter received last week from a patient at California State Prison, Los Angeles County, the underlying facts of which we verified in his medical records, illustrates the depth of and risks caused by the huge backlog of MAT appointments, and CCHCS's unfortunate responses to patients regarding it. On April 7, the patient was seen by a substance use disorder social worker, who determined he was at high risk due to opioid addiction and ordered an addiction medicine specialist appointment within 14 days. Nearly six months later, the patient has not been seen and no appointment is yet scheduled, despite him telling medical staff in writing in May that his addiction had reached an emergency level, and despite a formal grievance in which he stated, in June, that his addiction was escalating. In response to his grievance, CCHCS Headquarters last month informed him there would be "no intervention" because an appointment had been ordered.<sup>16</sup>

In response to our question regarding how the current addiction medicine initial appointment backlog will be addressed, CCHCS on October 5 said that in June primary care providers at four of the 35 prisons were trained to care for patients already on MAT, and that 26 additional staff, of an unspecified classification, will be trained by November, which will "provide further access to those waiting to see an Addiction Medicine provider." CCHCS did not provide information that the staff to be newly trained will be

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<sup>16</sup> On October 5 we asked CCHCS about this particular patient's situation.

1 sufficient to reduce the backlog.

2         On another topic, CCHCS last week finally issued for review and comment by  
3 Plaintiffs and others its revised mortality review policy, which has been pending for nearly  
4 two years. Once formally adopted, we believe the next major step, after mortality reviews  
5 are done for a period of time, is an evaluation by either the Court experts or an independent  
6 outside entity to determine if the new revised process, in combination with other CCHCS  
7 quality improvement mechanisms, adequately works to timely identify and remedy  
8 identified problems that create substantial risks of harm to patients.

9 **IX. OTHER UPDATES**<sup>17</sup>

10         *Plaintiffs' Position:* Plaintiffs welcome the State's announcement that DVI will  
11 close in September 2021.

12         *Defendants' Position:* On Friday, September 25, 2020, CDCR announced its  
13 decision to close California's sixth oldest prison, Deuel Vocational Institution (DVI) which  
14 is located in Tracy. DVI's closure is part of the state's multi-year budget plan. The  
15 incarcerated population at DVI will be transferred to other institutions based on their  
16 housing, custody, and rehabilitative needs. In addition, their rehabilitative, educational,  
17 and self-help program credits will transfer with them. It is anticipated that DVI will be  
18 fully deactivated by September 30, 2021.

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27 <sup>17</sup> At Plaintiffs' request Defendants will no longer include information previously  
28 reported under the heading "Non-Healthcare Items that May Be of Interest."

1 DATED: October 6, 2020

PRISON LAW OFFICE

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