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

22 MARCIANO PLATA, et al.,

23 Plaintiffs,

24 v.

25 GAVIN NEWSOM, et al.,

26 Defendants.

CASE NO. 01-1351 JST

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Judge: Hon. Jon S. Tigar

Date: January 28, 2021

Time: 10:00 a.m.

Crtrm.: 6, 2nd Floor

1 The parties submit the following joint statement in advance of the January 28, 2021
2 Case Management Conference.

3 **I. VACCINES**

4 The State's program to vaccinate people in CDCR custody is moving ahead. The
5 time frames the Receiver described to the Court remain generally within reach.
6 Specifically, vaccination of the population in medical beds at CMF, CHCF, and CCWF
7 who have not had COVID-19 has been completed; vaccination of people 65 and older who
8 have not had the disease is proceeding with the expectation that it will be concluded by the
9 time of the Case Management Conference; vaccination of people with COVID-weighted
10 risk scores of three and above who have not had the disease is also expected to be
11 completed in approximately a week from the time of this filing. The Receiver has
12 indicated that vaccination of the remaining population who have not had COVID-19 will
13 occur as previously described to the Court. Vaccination will then be offered to those who
14 have had COVID-19.

15 *Plaintiffs' Position:* Preliminary numbers on the acceptance rate among
16 incarcerated people are very positive, as Defendants report below. CCHCS reports a
17 coordinated approach to people who refuse the preliminary vaccine offer, with medical and
18 mental health and custody team members providing additional education, and they report
19 some success with those efforts. Plaintiffs applaud these efforts. For our part, we include,
20 with every letter we send to a person in CDCR, the excellent educational materials
21 developed by AMEND/UCSF with input and collaboration from a wide range of
22 organizations, many led by incarcerated or formerly incarcerated people (see
23 <https://amend.us/covidvaccinefaq/>). We also stand ready to provide whatever additional
24 help we can to further these efforts.

25 CCHCS says it continues to consider the question of whether staff vaccination
26 should be mandated. As of January 21, CCHCS reported that 35% of the approximately
27 53,000 staff who work at the prisons had received at least one dose of vaccine, and
28 approximately 20% have had the disease.

1 *Defendants' Position:* CDCR continues to work closely with CCHCS and their
2 public health partners to distribute the COVID-19 vaccine to both staff and incarcerated
3 persons as efficiently and expeditiously as possible, and consistent with constantly
4 evolving public health guidance. CDCR and CCHCS's distribution of the vaccine
5 comports with federal and state public health guidelines for distribution prioritization. The
6 State's prioritization, formalized in the California Department of Public Health's
7 Allocation Guidelines,¹ was developed by the Drafting Guidelines Workgroup with input
8 from the Community Vaccine Advisory Committee and was consistent with the Centers
9 for Disease Control and Prevention's guidance on this topic at the time it was issued.² The
10 California Department of Public Health issued further guidance on the evening of January
11 12, 2021, advising that providers may offer doses promptly to people in lower priority
12 groups when demand subsides in the current groups or doses are about to expire.

13 Healthcare personnel and frontline workers who are at risk of exposure to COVID-
14 19 because of their role in direct health care or long-term care settings, as well as
15 incarcerated residents of long-term care facilities and medically high-risk incarcerated
16 people were prioritized for receipt of the initial doses of the vaccine. As of January 25,
17 2021, 22,068 CDCR and CCHCS employees (or approximately 35% of employees) have
18 been given the first dose of the COVID-19 vaccine. Of these, 2,289 staff have received
19 both doses of the COVID-19 vaccine. Since the last case management conference,
20 CCHCS has moved from a first-come-first-served system to an appointment system for
21 providing vaccines to employees. Employees will still be required to wear PPE and
22 physically distance even with the vaccination.

23

24

25 ¹ CDPH Allocation Guidelines for COVID-19 Vaccine During Phase 1A:
26 Recommendations available at:
27 <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/CDPH-Allocation-Guidelines-for-COVID-19-Vaccine-During-Phase-1A-Recommendations.aspx>

28 ² CDC recommendations available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations.html>.

1 COVID-19 naïve patients at skilled nursing facilities (including, all patients at CMF
2 and CHCF, and certain units within CCWF) were initially prioritized to receive the
3 vaccine. All patients at skilled nursing facilities have been offered the vaccine. The
4 following additional groups are being prioritized in this order: COVID-19 naïve patients
5 age 65 or higher at all CDCR institutions, COVID-19 naïve patients who have a weighted
6 risk score of 6 or greater, and COVID-19 naïve patients with a weighted risk score of 3 or
7 greater. When vaccination of these groups is completed, the remaining COVID-19 naïve
8 CDCR population will then be offered the vaccine.

9 As of January 25, 2021, 8,349 incarcerated persons have been offered the vaccine.
10 Approximately 84% of those patients accepted the first dose of the vaccine and
11 approximately 99% accepted the second dose. Of those offered, COVID-19 naïve patients
12 aged 65 or older accepted dose 1 of the vaccine at a rate of over 90% and dose 2 at a rate
13 of over 99%; COVID-19 naïve patients with a COVID-19 weighted risk score of 6 or
14 higher accepted dose 1 of the vaccine at a rate of over 90% and dose 2 at a rate of over
15 99%; and COVID-19 naïve patients with a COVID-19 weighted risk score of 3 or higher
16 accepted dose 1 of the vaccine at a rate of approximately 86% and dose 2 at a rate of over
17 99%.

18 To keep the staff and patient populations informed and to continue to encourage
19 acceptance of the COVID-19 vaccine, CDCR and CCHCS release educational materials on
20 a regular basis. Dr. Heidi Bauer from CCHCS's Public Health Branch answered
21 frequently asked questions about the COVID-19 vaccine by video during the week of
22 January 18, 2021. Answers to frequently asked questions were also posted online at
23 <https://cchcs.ca.gov/covid19-vaccine/>. Additionally, during the week of January 11, 2021,
24 CDCR and CCHCS shared the story of a Psychiatric Technician at California Medical
25 Facility who battled COVID-19, and during the week of January 18, shared the story of the
26 Chief of the Office of the Ombudsman and her family's fight with COVID-19. The video
27 for the latter is available at
28 <https://www.youtube.com/watch?v=wWP6F9U0ynQ&feature=youtu.be>.

1 A Vaccination Planning and Implementation Committee meets daily to monitor
2 vaccine clinic operations and ensure safe and efficient vaccine delivery to staff and
3 patients.

4 **II. POPULATION REDUCTION**

5 *Plaintiffs' Position:* Further urgent population reductions are necessary to minimize
6 the risk of and harm from COVID-19, as outbreaks continue and much of the population
7 has not been vaccinated. Defendants have acknowledged that reduced population
8 contributes to fewer infections and deaths (*see* ECF No. 3469 at 3-4), and last month
9 Secretary Allison reaffirmed that CDCR prisons' "large population and physical layout
10 make us particularly susceptible to the spread of COVID-19."³

11 The prison and camp population is currently approximately 91,300.⁴ We appreciate
12 that this total is approximately 26,000 fewer than in mid-March,⁵ when the first
13 incarcerated person in CDCR was diagnosed with COVID-19. We further recognize that
14 approximately 11,000 of that reduction has resulted from early releases, including the
15 program begun in July, which still continues, for some within 180 days of release.⁶ The
16

17 ³ See Cal. Dep't of Corr. & Rehab., *Important COVID-19 message from Secretary*
18 *Allison* (Dec. 4, 2020), <https://www.cdcr.ca.gov/insidecdcr/2020/12/04/important-covid-19-message-from-secretary-allison>.
19

20 ⁴ See CDCR Weekly Report of Population (Jan. 20, 2021) at Part A.I.1
21 (Institution/Camps), [https://www.cdcr.ca.gov/research/wp-](https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/01/Tpop1d210120.pdf)
[content/uploads/sites/174/2021/01/Tpop1d210120.pdf](https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/01/Tpop1d210120.pdf) (accessed Jan. 22, 2021).
22

23 ⁵ See and compare CDCR Weekly Report of Population (Mar. 18, 2020) at Part AI.1
24 (Institution/Camp), [https://www.cdcr.ca.gov/research/wp-](https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/03/Tpop1d200318.pdf)
[content/uploads/sites/174/2020/03/Tpop1d200318.pdf](https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/03/Tpop1d200318.pdf) (accessed Jan. 22, 2021).
25

26 ⁶ Between December 3, 2020 and January 13, 2021 – the most recent six week period
27 for which data has been provided by CDCR – the 180 day release program resulted in 362
28 early releases. That is a small number relative to the more than 1,700 "natural releases"
that, according to CDCR data, happened during that same time period.

1 remainder of the reduction, including much of that seen over the last two months, has
2 resulted from natural releases and the suspending of or great limitations on intake from the
3 county jails, where we understand approximately 9,000 are incarcerated and currently
4 awaiting transfer to CDCR. With CDCR now re-opening intake,⁷ the prison population is
5 expected to increase over time absent further population reduction efforts.

6 Given the continuing risk of infection and thus morbidity and mortality from
7 COVID-19 in prisons, more must be done. CDCR reports its program, begun in
8 December, to review certain medically vulnerable incarcerated people for release or
9 referral back to superior court for resentencing (*see* ECF No. 3501 at 5:7-21) has been
10 completed. It has had only a minor impact on population. Only 1,690 people were
11 deemed eligible for these reviews (*see* ECF No. 3520 at 7:3), and as reported by
12 Defendants, only 15 were approved for release. Another 153 have been referred for
13 resentencing, according to Defendants. Although eventually they may be released, the
14 overall population reduction resulting from this program will remain minimal.

15 As previously discussed, Secretary Allison in December 2020 indicated she would
16 in the near future implement changes to CDCR's credit earning rules that will result in
17 certain sub-groups of the incarcerated receiving additional time credits as they serve their
18 terms. *See* ECF No. 3520 at 5:5-8. Unfortunately, there appears to have been no further
19 action with regard to this. Even if there was, unless implemented immediately and applied
20 fully retroactively, it will result only in incremental advances to release dates, with any
21 substantial reduction to the current population only happening well in the future. Again,
22 reduction in population is necessary now.

23 The Governor should grant additional medical reprieves of sentences, including of
24 those indeterminately sentenced, as very few have been granted. *See* ECF No. 3487 at 2:4-
25 14. The Secretary should also re-start the program for early release for some with a year or
26

27
28 ⁷ CDCR says that it planned to receive a total of 175 people from county jails the
week of January 18, 2021, and 370 during the week of January 25, 2021.

1 less to serve that was done between July and September at a sub-set of prisons, except it
2 should now apply to all given the pervasive outbreaks which put all incarcerated at risk.
3 Further, the Secretary should grant incarcerated people “Positive Programming Credits”
4 (PPCs) as CDCR did in early July, approximately four months after the pandemic began,
5 when it rightfully recognized that because of program restrictions imposed to limit the
6 virus’ spread people were unable to earn sentence-reducing time credits as they previously
7 could. Granting additional PPC now would be fair, and result in relatively quick
8 population reduction. The Governor and Secretary must take all these and other actions
9 now, to further reduce crowding so as to reduce the spread of the virus, and thus sickness
10 and death, in the prisons.

11 *Defendants’ Position:* CDCR’s population has decreased by 25,989—or over 22
12 percent—since the start of the COVID-19 public health crisis.⁸ Between July 1, 2020 and
13 January 20, 2021, 7,252⁹ people were released from institutions and camps through the
14 COVID-19 early-release programs Defendants announced on July 10, 2020.¹⁰ This
15 represents 80 more early releases than those reported in the January 13, 2021 case
16 management statement.¹¹ As reported in previous statements, the previous Secretary
17

18
19 ⁸ This figure is calculated by taking the difference between the total population in
20 institutions and camps on February 26, 2020 and January 20, 2021. Weekly population
21 reports can be found at [https://www.cdcr.ca.gov/research/weekly-total-population-report-
archive-2/](https://www.cdcr.ca.gov/research/weekly-total-population-report-archive-2/).

22 ⁹ In the case management conference statement filed on January 13, 2021, this
23 number was mistakenly reported as 7,953. ECF No. 3530 at 11:9-11. The correct number
24 of early releases from CDCR’s institutions and camps between July 1, 2020, and January
25 6, 2021, is 7,172.

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

28 ¹¹ See footnote 9.

1 released 6 additional medically high-risk individuals who did qualify for relief through the
2 July 10 program. And before the July 10 program went into effect, the previous Secretary
3 approved a one-time release of 14 medically high-risk individuals from San Quentin State
4 Prison early in the COVID-19 pandemic. An additional 12,630 were released in
5 accordance with their natural release dates during this period. As of January 20, 2021,
6 CDCR's institutions house approximately 89,933 persons.¹²

7 In addition to CDCR's COVID-19 early release programs and mitigation measures,
8 the Secretary completed her review of eligible medically high-risk people for expedited
9 consideration for resentencing under Penal Code section 1170, subdivision (d)(1)). Those
10 being considered include people who have served their base term, but whose sentence(s)
11 carry enhancements that were previously mandatory, but are now discretionary after the
12 passage of Senate Bill 1393, which became effective on January 1, 2018. As of January
13 25, 2021, 15 were released and an additional 153 were referred to the courts for
14 consideration under Penal Code section 1170(d)(1).

15 The Secretary individually reviewed indeterminately-sentenced individuals who
16 have been granted parole but remain in prison because they have not yet reached their
17 minimum eligible parole date or youth offender parole date. Secretary Allison approved
18 17 individuals for release within this group.

19 CDCR continues to process early releases on a rolling basis through the 180-day
20 early-release program announced on July 10, which has accounted for the vast majority of
21 early releases since then.

22 The additional early-release programs referenced by Plaintiffs above are
23 discretionary in nature and were initially implemented based upon the Secretary's
24 authority under California Government Code § 8658 in response to the pandemic. Since
25 the last Case Management Conference, the Governor has granted medical reprieves of
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27
28 ¹² See January 20, 2021 population report at <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/01/Tpop1d210120.pdf>.

1 sentences to six additional individuals deemed by the Receiver to be at high risk for
2 potential complications from COVID-19. These individuals range in age from 69 to 85
3 years old. CDCR is not currently planning to re-start the early release program for persons
4 with a year or less to serve or providing across-the-board Positive Programming Credits at
5 this time, but may reconsider in the future.

6 It bears noting that incarcerated patients' COVID weighted risk score is only one of
7 many factors considered by CDCR in determining whether early release is appropriate,
8 including, among others, risk to public safety, victim's rights, risk of recidivism, and time
9 served. Further, incarcerated persons who may be *eligible* for parole may nonetheless be
10 determined not to be *suitable* for parole due to the unreasonable risk of current danger they
11 pose, as determined by a panel of Board of Parole Hearings commissioners and deputy
12 commissioners.

13 **III. QUARANTINE AND ISOLATION**

14 *Plaintiffs' Position:* Plaintiffs' motion remains pending before the Court. We
15 believe that Court intervention remains necessary and ask that the Court issue the proposed
16 order, as revised on January 13 (ECF No. 3531).

17 Plaintiffs do not doubt Defendants' desire to vaccinate people in their custody, but
18 we do doubt the ability of CDCR and CCHCS to act on that desire without commitment of
19 the necessary supplies from Defendant Governor Newsom. Although Defendants and the
20 Receiver report encouraging numbers and predicted timelines, the Court's engagement,
21 involvement, and potential action in this area has had an effect on their ability to follow
22 through and meet those timelines. Vaccination is the only judicial remedy that can have a
23 meaningful impact on the dangerous quarantine practices in CDCR. Accordingly,
24 Defendants should be required to quarantine people as safely as possible, including the use
25 of cells with solid doors for all who have not had COVID-19 and have not been vaccinated
26 by a date certain. The Court's intervention in this area will save lives.

27 Defendants discuss below the widespread practice at RJD and LAC to co-locate in
28 the same housing units patients who test positive, as well as those on quarantine, with

1 others not on medical isolation or quarantine. Defendants admit a part of the reason this
2 happened is “staffing challenges.” They did not have enough staff at the prisons to timely
3 complete these essential moves. Second, as the Court has previously stated, the prisons
4 have insufficient space to house people in accord with public health directives. Defendants
5 below claim “RJD had abundant isolation space,” but the daily Outbreak Management
6 Tools from early December to approximately mid-January, when infection numbers
7 dropped to relatively low levels, repeatedly and consistently stated, for numerous housing
8 units, that “confirmed positive patients will be moved . . . as beds become available.” In
9 other words, overcrowding placed patients at serious risk of harm.

10 Defendants’ assertion that most of these housing failures are a result of patient
11 refusals to move rings hollow. Their data in this area is suspect for several reasons. For
12 one thing, the claimed refusals are apparently undocumented, so there is no mechanism to
13 ensure they are accurate. We suspect that some are not: we have heard from people at RJD
14 and LAC who say they wanted to move, but were refused. And we have previously
15 documented the gravely disturbing practice of staff at another prison (CSP-Sacramento)
16 falsifying refusal forms for medical appointments for which the patients were never
17 notified.

18 To the extent patients actually do refuse to move, Plaintiffs believe, based on
19 numerous client contacts, that they are motivated by distrust of Defendants’ competence
20 and good faith in managing the pandemic. There is a widespread attitude of doubt that
21 moving to another unit will do anything other than deprive patients of their jobs, property,
22 and program, since patients have seen and heard about widespread and apparently
23 unchecked spread, botched transfers, and staff – the primary vectors of introduction of the
24 virus into the prisons – with incomplete adherence to masking requirements.

25 *Defendants’ Position:* Defendants have continued to make efforts to ensure that
26 prisons comply with the Receiver’s isolation and quarantine guidance provided on
27 December 4 and 18, 2020, by closely monitoring the prisons use of reserved quarantine
28 space. When it has been discovered that the guidance has not been correctly followed at a

1 particular prison, CDCR headquarters has issued strenuous corrective instructions.

2 At the last case management conference the Court asked for more information
3 concerning reasons patients who tested positive at R.J. Donovan (RJD) and California
4 State Prison, Los Angeles County (LAC) during the outbreaks in December were not
5 moved to isolation. The outbreaks at these two prisons were large and struck rapidly.
6 During outbreaks like these, the circumstances are constantly evolving and officials often
7 find themselves tasked with making the best possible decision under rapidly changing and
8 complex circumstances. Patient moves to isolation or quarantine spaces take time to
9 complete. When it is determined within a very short period that large numbers of patients
10 must all be immediately moved to isolation or quarantine (for instance, when results from
11 mass testing pour in), the sheer volume of necessary moves can cause delays. Staffing
12 challenges caused by the outbreak add to the difficulty of quickly moving patients. But the
13 primary challenge officials faced at LAC and RJD were patient refusals to move.

14 Although the Receiver's guidance on isolation and quarantine might appear simple
15 on paper, during large, quickly spreading, and rapidly evolving outbreaks, it cannot be
16 overstated how complex and difficult it is to comply with that guidance. For example, in
17 LAC's B3 housing unit, it became clear as test results were received in early December
18 that large numbers of patients in that unit had contracted the virus. LAC officials made a
19 decision to convert B3 into an isolation unit and to remove patients who were not known to
20 be positive. In an effort to quickly remove those patients without delay, many patients
21 whose test results had not yet been received were moved out of the unit to quarantine
22 spaces. As test results continued to come in, it was discovered that many patients who
23 were moved out of B3 were actually positive and had to be moved back into the unit for
24 isolation.

25 By mid-December, virtually all patients in LAC's Facilities B and C who should
26 have been moved to isolation (approximately 342 patients) were refusing to move to
27 isolation. And patients who should have moved to quarantine spaces were also refusing to
28 move. The patients in these Facilities were unified in their decision to refuse to move.

1 The constant shuffling of patients from one place to another throughout the prison gave
2 many patients the impression that the moves were causing the virus to spread faster and
3 worsening LAC's outbreak, which, in turn, lead to even more patient refusals to move to
4 isolation or quarantine.

5 At RJD, patient refusals to move were also the primary reason patients who should
6 have moved to isolation did not move. During the period from December 14 through
7 January 4, officials at RJD had to contend with well over 400 patient refusals to move to
8 isolation or quarantine. RJD had abundant isolation space, much of which was never used
9 during its large outbreak because patients simply refused to move to those isolation spaces.

10 **IV. STAFF SCREENING AND TESTING**

11 *Plaintiffs' Position:* Staff remain the most significant vector for introducing
12 COVID-19 into the state prison system. As of January 25, nearly 15,000 staff members
13 had contracted COVID-19 since March, and more than 1,700 were out that day with an
14 active case of COVID-19. *See* Cal. Dep't of Corr. & Rehab., *CDCR/CCHCS COVID-19*
15 *Employee Status*, <https://www.cdcr.ca.gov/covid19/cdcr-cchcs-covid-19-status> (last
16 updated Jan. 25, 2021). And while CCHCS and CDCR have begun offering vaccines to
17 staff, approximately 45% of the 53,000 staff working in the prisons have not had the
18 disease and have not yet received a vaccine. Moreover, it is not yet known whether
19 vaccination prevents transmission. Frequent and rigorous staff testing thus remains
20 essential to preventing the introduction and spread of COVID-19 in the prisons.

21 CDCR and CCHCS currently lack a reliable system to ensure each day that staff at
22 the prisons have complied with mandatory testing. As Defendants have described in recent
23 Joint Case Management Conference Statements, on December 21, CDCR and CCHCS
24 issued a joint memo stating that "any employee who refuses to comply with mandatory
25 COVID-19 testing shall not be permitted to enter the institution or facility and shall be
26 placed on approved dock (without pay) until they comply with mandatory testing." ECF
27 No. 3530 at 20 (January 13 Joint CMC Statement); ECF No. 3510 at 14 (December 22
28 Joint CMC Statement); *see also* ECF No. 3520-1 (copy of December 21 memorandum).

1 After this memorandum was released, we asked how prison staff were tracking compliance
2 with the testing guidelines, to ensure employees were being appropriately excluded from
3 work if they had not tested. On January 21, we received a description of the process used
4 at eight prisons: weekly, prison staff review a list of employees who tested the week
5 before, compare it to a list of employees who worked that week, and investigate those
6 employees who appear to have worked but were not tested. Employees who are identified
7 through this process are not immediately placed on leave; instead, they are directed to get
8 tested and are only placed on leave if they then refuse to test.

9 This process will not ensure that employees showing up to work each day have been
10 tested in accordance with the guidelines, as required by the December 21 CDCR/CCHCS
11 Memorandum. This process will only identify noncompliant staff the week after they have
12 worked, perhaps for many days, without having been tested. This system also will not
13 identify whether particular employees were tested every 7 days, as required by the testing
14 guidance, but only whether employees were tested at some point the week they worked.
15 From the examples provided, it appears an employee could test on a Monday one week and
16 a Friday the next week (11 days apart) and still be considered in compliance with the
17 requirement to test every 7 days.

18 On January 22, we sent these concerns to CCHCS and CDCR, and suggested that
19 CCHCS and CDCR also require staff provide proof of compliance with testing policies
20 (e.g., proof they were tested within the previous 7 days) during the entrance screening
21 process. We met on January 25 to discuss the issue. We suggested that CCHCS and
22 CDCR consider (1) asking employees whether they have been tested within the required
23 timeframe during entrance screening and (2) producing a list each day of all employees
24 who have been tested during the previous 7 days and cross-referencing that list during
25 entrance screening to ensure staff have been tested in accordance with policy. CCHCS and
26 CDCR said they are continuing to consider and discuss the issue this week.

27 CCHCS and CDCR also recently provided the fourth set of biweekly reports of staff
28 noncompliance with face covering, physical distancing, and testing requirements. It is

1 apparent from these logs that failures to test continue at some prisons. CDCR documented
2 staff refusals to test in December and January at Central California Women's Facility (29
3 refusals); Mule Creek State Prison (12 refusals); High Desert State Prison (9 refusals);
4 California State Prison, Corcoran (7 refusals); Substance Abuse Treatment Facility (7
5 refusals); Avenal State Prison (6 refusals); San Quentin State Prison (5 refusals);
6 California Institution for Men (4 refusals); Richard J. Donovan Correctional Facility (4
7 refusals); North Kern State Prison (3 refusals); Chuckawalla Valley State Prison (3
8 refusals); California Institution for Women (2 refusals); Valley State Prison (2 refusals);
9 and Sierra Conservation Center (1 refusal). We do not have access to reliable testing data
10 to determine whether there have been any additional refusals that were not documented in
11 these logs. As described in previous Case Management Conference Statements, we have
12 been requesting employee testing data for many months. The initial data we received in
13 late December reflected low compliance percentages with mandatory weekly testing, but
14 we were told this data did not account for staff who did not test because they were out sick
15 or on vacation. *See* ECF No. 3530 at 19-20. We have been told CCHCS and CDCR are
16 still reviewing and validating this data.

17 *Defendants' Position:* CDCR continues to coordinate with the Receiver's Office
18 and enforce the Memorandum on Employee Accountability for COVID-19 testing, which
19 dictates that any employee who refuses to comply with mandatory COVID-19 testing shall
20 not be permitted to enter the institution or facility and shall be placed on approved dock
21 (without pay) until they comply with mandatory testing. Unwillingness to comply with
22 mandatory staff testing shall be interpreted as a refusal. Concurrently, employees who
23 refuse to comply with mandatory employee COVID-19 testing and who are not actively
24 engaged in a request for reasonable accommodation shall also be subject to progressive
25 discipline for their refusal to submit to the mandatory testing. Additionally, the Receiver's
26 Office circulated an updated draft of its Employee Testing Guidance to the parties on
27 January 21, 2021, and requested feedback before the draft is finalized.

28 On January 25, 2021, the Receiver's Office and CDCR met with Plaintiffs' counsel

1 to answer their questions regarding the updated draft of the staff testing plan, which is in
2 the process of being revised. Plaintiffs also proposed changes to the current system of
3 monitoring staff compliance with the plan. The Receiver's Office indicated they will
4 consider the feasibility of Plaintiffs' suggestions and respond to Plaintiffs with their
5 findings. CDCR will continue to support CCHCS's efforts, particularly with respect to
6 staff testing.

7 Additionally, with respect to staff compliance with mask-wearing and physical
8 distancing, CDCR will continue to progressively discipline employees who fail to properly
9 wear a mask and/or physically distance from others appropriately. CDCR will also
10 continue to report to Plaintiffs' counsel and the Court on a bi-weekly basis regarding
11 employees who fail to comply with Department requirements in this regard.

12
13 DATED: January 26, 2021

HANSON BRIDGETT LLP

14
15
16 By: /s/ Samantha Wolff

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17
18
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20 DATED: January 26, 2021

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21
22
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DATED: January 26, 2021

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