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

21
 22 **MARCIANO PLATA, et al.,**
 23
 24 **Plaintiffs,**
 25 **v.**
 26 **GAVIN NEWSOM, et al.,**
 27 **Defendants.**

CASE NO. 01-1351 JST
**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT**
 Judge: Hon. Jon S. Tigar
 Date: March 26, 2021
 Time: 2:30 p.m.
 Crtrm.: 6, 2nd Floor

1 The parties submit the following joint statement in advance of the March 26, 2021
2 Case Management Conference.

3 *Plaintiffs' Introduction:* It's very good news that the number of active COVID-19
4 cases among incarcerated people has dropped to such a low level. It's also good that
5 Defendants, as they state below, are working to ensure that programming for incarcerated
6 people returns to what it was before March 2020. But it is far too early to declare the
7 pandemic over in California's prisons and resume the delegation process, as Defendants
8 below suggest should happen very soon. CCHCS has made significant, encouraging
9 progress in vaccinating those who are incarcerated and who work in CDCR prisons, but
10 that work is far from complete. For example, Defendants state below the Avenal State
11 Prison has reached more than 90% immunity, but only about 30% of the incarcerated
12 population at Avenal has received one or more doses of the vaccine. Most are
13 unvaccinated and contracted COVID-19 during the massive outbreaks at that prison in the
14 summer and fall of 2020, and are thus susceptible to reinfection.

15 We believe that CCHCS's primary tasks at present are, in addition to caring for
16 current and ongoing COVID cases, to complete offering vaccination to all in CDCR, fully
17 vaccinate those who want it, then address the high refusal rates among patients at some
18 prisons and housing units within prisons and among certain staff classifications statewide.

19 Once vaccination is substantially complete, CCHCS should focus on what we
20 believe are substantial backlogs in specialty services, including possibly unidentified needs
21 for such services, and restarting its primary care clinical services. In this regard, we note --
22 and this comes as no surprise -- that the monthly Dashboards show very poor compliance
23 with medical service requirements in general and especially with those for specialty
24 appointments. We understand the reasons for the backlogs and hope compliance can
25 rapidly improve, but we expect the process to require significant time and resources. We
26 also expect that CCHCS and CDCR will focus more attention on certain statewide medical
27 service issues, including problems with emergency response care, the substantial backlog
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1 of health care incident report reviews (the first step in patient safety improvement efforts,
2 including root cause analyses), and expanding substance abuse treatment.

3 *Defendants' Introduction:* For more than a year, Defendants, their partners at
4 CCHCS, and public health experts have worked tirelessly to address the ever-moving
5 target that is COVID-19. As this Court acknowledged at the last case management
6 conference, because of Defendants' and CCHCS's actions during the course of the
7 pandemic, infections have declined significantly (currently down from over 10,000 to only
8 40 active cases) and "we're entitled to feel good about the progress that has been made."
9 (Case Mgmt. Conf. Tr., 5:22-24, Mar. 4, 2021.) As discussed in greater detail in the
10 Vaccination section, CCHCS recently noted that CDCR has been one of the most proactive
11 correctional organizations in the world in recognizing the public health imperative to
12 vaccinate those who live and work in correctional facilities. As a result, there is increasing
13 optimism about the ability to resume programing and in-person visiting.

14 As of March 22, 2021, 47% of the incarcerated population has been vaccinated with
15 at least one dose of a COVID-19 vaccine, and 78% have some form of immunity to the
16 virus (either through vaccination or having previously contracted the virus). Some
17 institutions have levels of immunity through vaccinations and prior infections that exceed
18 90% of the population, including Avenal State Prison, California Men's Colony, California
19 Rehabilitation Center, Correctional Training Facility, Chuckawalla Valley State Prison,
20 Mule Creek State Prison, and Valley State Prison. Furthermore, 42% of staff have
21 received at least one dose of vaccine. These successes in the vaccination rollout far exceed
22 those achieved by other states and even most nations. In light of these significant gains,
23 CDCR will be demobilizing the Department Operations Center (DOC), which was
24 originally established on March 15, 2020. It will transition to a COVID-19 Support Team,
25 which will be comprised of one liaison each from CDCR, CCHCS, and support staff.

26 Defendants are taking steps to ensure that life for incarcerated persons returns to
27 what it was before March 2020, and Defendants are pleased that the Court is
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1 contemplating resuming its onsite visits because onsite tours will more fully demonstrate
2 their many successes and ongoing efforts to address and mitigate risks associated with
3 COVID-19. In light of these achievements, and cognizant of the fact that all must remain
4 vigilant in the fight against COVID-19, Defendants are hopeful that the parties can
5 intensify their focus on the delivery of constitutionally adequate medical care on a system-
6 wide basis.

7 Since the last Case Management Conference held before the COVID-19 pandemic,
8 on November 5, 2019, the Office of the Inspector General has issued five Cycle 6 reports,
9 finding the delivery of medical care “Adequate” at Wasco State Prison, CSP-Solano,
10 Valley State Prison, California Rehabilitation Center, and CSP-Los Angeles County. Only
11 one of these institutions has been delegated, and it is Defendants’ expectation that the
12 delegation review process will resume in the very near future so that this case can continue
13 on its previous trajectory toward resolution.

14 **I. VACCINES**

15 As of March 22, 2021, 71% percent of all incarcerated people have been offered at
16 least one dose of the vaccine, and 67% of all people offered have accepted the vaccine.
17 This amounts to 45% percent of the incarcerated population having received at least one
18 dose of the vaccine. Vaccination rates of medically high-risk incarcerated people are as
19 follows: 99% of all COVID-19 naïve patients aged 65 or older have been offered the
20 vaccine, and they accepted at a rate of 90%; 99% of all COVID-19 naïve patients with a
21 COVID-19 weighted risk score of 6 or higher have been offered the vaccine, and they
22 accepted at a rate of 91%; and 98% of COVID-19 naïve patients with a COVID-19
23 weighted risk score of 3 or higher have been offered the vaccine, and they accepted at a
24 rate of 83%. Additionally, as of March 22, 2021, 42% of staff who work in CDCR’s
25 institutions have been given at least one dose of the COVID-19 vaccine. Employees and
26 incarcerated people are still required to wear personal protective equipment and practice
27 physical distancing even after receiving the vaccine.

28

1 *Plaintiffs' Position:* We are pleased with the overall progress with vaccinations,
2 which are necessary to minimize the risk of harm in the dangerous congregate settings of
3 CDCR prisons. CCHCS in the last three weeks provided second doses to an impressive
4 number of patients, although limited vaccine supplies greatly reduced the number of
5 patients who could be offered a first dose, compared to previous weeks. CCHCS reports
6 that a substantially larger vaccine allocation was received this week, and greatly increased
7 numbers of first dose offers are thus expected. We believe this larger allocation will result
8 in offers of vaccine to essentially all of the approximately 2,000 COVID-susceptible
9 patients who are age 65 and older or medically high risk, who had not yet been offered
10 vaccine as of March 20. We raised concerns about these patients last week, and very much
11 appreciate that on March 20 CCHCS asked each prison to consider those patients'
12 vaccination needs, then reported on March 22 that approximately 300 of them had been
13 offered a first dose in the previous two days.¹

14 *Defendants' Position:* As Plaintiffs acknowledge, Defendants and CCHCS have
15 made good progress with vaccine distribution to the incarcerated population. Currently,
16 78% of the incarcerated population has protection against COVID-19 as a result of either
17 receiving the vaccine or recovering from the virus, and nearly all medically high-risk
18 incarcerated people, including those who are 65 or older, have been vaccinated.² The State
19 is committed to vaccinating the remaining population as quickly as possible, consistent
20 with public health guidelines, and based on supplies received from the federal government.

21 To keep the staff and patient populations informed and to continue to encourage

22
23 ¹ We do not agree with Defendants' assertion below that those who have recovered
24 from the virus have "protection against COVID-19." CCHCS says that those who are
25 recovered and more than 90 days from their initial infection date are "COVID susceptible."
26 It requires that such patients be tested for COVID-19, to quarantine if exposed to an active
case, and be medically isolated if they test positive. CCHCS is vaccinating these patients
against COVID-19, in accord with public health guidelines.

27 ² Plaintiffs added their footnote 1 above approximately thirty minutes before the
28 deadline to file this statement. Defendants are unable to draft a response at this time, but
can respond at the case management conference or at a later date.

1 acceptance of the COVID-19 vaccine, the State remains focused on educating its staff and
2 incarcerated population on the benefits of taking the vaccine. Among other educational
3 efforts, incarcerated people receive one-on-one counseling from medical professionals if
4 they do not initially accept the vaccine, and medical staff specially meet with medically
5 high-risk COVID-19-naïve patients who refuse the vaccine. Staff and incarcerated people
6 can request the vaccine later if they do not accept it when first offered. According to the
7 Receiver's Office, there is no correlation between the rate at which staff accept the vaccine
8 and the rate at which incarcerated people accept the vaccine; therefore, whether or not staff
9 are willing to accept the vaccine does not affect incarcerated people's willingness to accept
10 the vaccine. Currently there are no plans to mandate vaccinations at this time. Consistent
11 with Centers for Disease Control and Prevention guidelines, CDCR continues to require
12 staff and incarcerated people to wear masks, practice social distancing, and participate in
13 regular COVID-19 testing as frequently as twice per week, regardless of whether they have
14 been vaccinated.

15 As reported by the Receiver's Office, few if any correctional systems in the world
16 have been more proactive in recognizing the public health imperative to vaccinate those
17 who live and work in correctional facilities. By doing so, the State has been able to
18 prevent unnecessary illness and death both within CDCR's institutions and beyond in the
19 outside community. When the State first started its vaccination efforts in late December,
20 CDCR had over 10,000 active COVID-19 cases among its staff and patients. With the
21 active support of the administration, the tireless efforts of CCHCS and CDCR's vaccine
22 working group, and the relentless work of staff in the institutions, nearly half of CDCR's
23 incarcerated population and staff have received at least one dose of COVID-19 vaccine.
24 The results, as reported by the Receiver's Office, could not be clearer. CDCR's
25 institutions have had only 33 new COVID-19 cases over the past two weeks—the lowest
26 number since April 2020—and 23 institutions have had zero new cases over the past two
27 weeks. According to the Receiver's Office, COVID-19 infection rates among staff have
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1 also dramatically decreased. CCHCS staff continue to improve public data on the website
2 to ensure accurate reporting of staff cases. CCHCS plans to take advantage of these low
3 numbers by redoubling its efforts to vaccinate those who have not yet been offered the
4 vaccine and also those who have moved past their initial vaccine hesitancy. The
5 Receiver's Office is optimistic that, in the coming months, programming will increase and
6 in-person visits will resume, taking into consideration necessary safety precautions.

7 **II. POPULATION REDUCTION**

8 *Plaintiffs' Position:* Unfortunately, CDCR's population is increasing. Having re-
9 opened intake from the county jails, the institution and camp population has increased by
10 more than 600 since February 3, per the Department's Weekly Total Population Reports.³

11 Population reduction remains necessary. CDCR's prisons are still the ideal home
12 for the coronavirus, and stopping its spread has proven to be almost impossible. The
13 current decrease in active cases and continuing vaccination efforts do not guarantee that
14 there will be no further outbreaks. The full impact of immunity from vaccines and
15 previous infection is not yet known, including because of possible virus variants, and
16 because infections can occur, and have already occurred, among those fully vaccinated.
17 Staff, the primary vector for patient infections, will continue to put patients at risk by
18 bringing infections into the facilities. Housing unit ventilation, especially in cold weather
19 months, appears to spread the virus, even between solid door cells (see Section VI, below).
20 More generally, public health experts warn of a possible fourth surge of infections.⁴

21 We appreciate that CDCR continues its program providing for early release for
22 some with less than 180 days to serve. This appears to benefit about 350 people per
23 month. We believe that CDCR should reinstitute the program, implemented for

24 ³ See Cal. Dep't of Corr. & Rehab., *2021 Weekly Total Population Reports*,
25 <https://www.cdcr.ca.gov/research/2021-weekly-total-population-reports/>.

26 ⁴ See Annie Vainshtein & Matthias Gafni, *Why another COVID surge could hit the*
27 *Bay Area in the months ahead*, San Francisco Chronicle (March 11, 2021),
28 <https://www.sfchronicle.com/local/article/san-francisco-Bay-Area-fourth-COVID-surge-spring-16016459.php>.

1 approximately three months in mid-2020, that allowed early release for some with less
2 than one year left to serve.

3 We also appreciate that the Governor earlier this month granted medical reprieves
4 to 11 persons determined to have a heightened risk from COVID-19. This action
5 recognizes the continuing risk of harm to incarcerated people. We believe reprieves
6 should be granted to many others.

7 With regard to sentence-reducing credits, we appreciate, as Defendants explain
8 below, that those who have taken self-study education classes during the pandemic are
9 taking or may soon be able to take classroom-based tests that CDCR expects will result in
10 significant milestone and education credit awards. We plan to ask Defendants about these
11 credit awards.

12 Finally, we appreciate that CDCR, as Defendants also report below, plans to revise
13 its rules to increase credit-earning opportunities for some people. This revision was first
14 announced by CDCR Secretary Allison to the *Coleman* court in December. It should be
15 implemented promptly, not sometime this summer, as Defendants state below is their
16 current “hope.” Because it will be (absent special action by the Secretary only)
17 prospective only, this revision will not immediately result in a material reduction in the
18 overall population, but may do so in the long term; we plan to ask Defendants about this
19 once final revisions are announced.

20 *Defendants’ Position:* CDCR’s population has decreased by 25,761, or about 22%
21 since the start of the COVID-19 public health crisis.⁵ Between July 1, 2020 and March 17,
22 2021, 7,952 people were released from institutions and camps through the COVID-19
23 early-release programs Defendants announced on July 10, 2020.⁶ This represents 228

24 ⁵ This figure is calculated by taking the difference between the total population in
25 institutions and camps on February 26, 2020 and March 17, 2021. Weekly population
26 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/).

27 ⁶ See ECF No. 3389 at 2:4-5:4 and <https://www.cdcr.ca.gov/covid19/expedited->
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1 more early releases than those reported in the case management conference statement filed
2 on March 2, 2021.⁷ An additional 14,799 people were released in accordance with their
3 natural release dates. CDCR's institutions currently house 90,064 people.⁸ The slight
4 increase in population since Defendants' last reporting results from increased intake from
5 county jails. Weekly intake only occurs after approval by CDCR, healthcare staff, and the
6 Receiver's office after assessing the receiving institutions' capacity to safely receive and
7 quarantine people from county jails. Intake is done in accordance with the Movement
8 Matrix, which requires stringent movement protocols, including COVID-19 testing,
9 quarantine, and personal-protective-equipment practices.

10 Incarcerated people continue to be released through the 180-day early-release
11 program announced on July 10, 2020. Defendants implemented this and other early-
12 release programs in response to the COVID-19 pandemic at a time when other protections
13 were still being developed in accordance with public health guidelines that were changing
14 rapidly. The current status of the pandemic within CDCR's institutions, however, has
15 changed dramatically since the time the early release program and positive programming
16 credits (PPC) were implemented – including the fact that 58% of the COVID-naïve
17 incarcerated population is currently vaccinated and there are only 39 active cases of
18 COVID-19 within the institutions. As a result, the Secretary is not contemplating
19 exercising her discretion to award further PPCs at this time.

20 Per the Court's order, a CDCR official⁹ will attend the March 26, 2021 case

21 _____
22 [releases/](#) for details regarding CDCR's COVID-19 early-release program announced on
23 July 10, 2020.

24 ⁷ See ECF No. 3558 at 5:2-4.

25 ⁸ See March 17, 2021 population report a [https://www.cdcr.ca.gov/research/wp-
26 content/uploads/sites/174/2021/03/Tpop1d210317.pdf](https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/03/Tpop1d210317.pdf).

27 ⁹ Charles Callahan, Deputy Director of Facility Support, will be appearing as
28 CDCR's representative in accordance with the Court's Order to discuss CDCR's current

1 management conference to answer the Court's questions related to population reduction.
2 Secretary Allison, CDCR's General Counsel, and counsel for the parties participated in an
3 *in camera* session with the Court on March 19, 2021, in which the Secretary provided
4 information about credit awards to incarcerated people.

5 As previously reported, CDCR awarded 12 weeks of positive programming credits
6 to 83,347 eligible incarcerated people in 2020 to offset the impact of COVID-19 on
7 people's ability to earn credits through regular programming. The impact of the 2020
8 credit award was significant: the incarcerated population earned a total of 4,428,779 days
9 of credits in 2019, and 8,649,378 days in 2020. The 2020 positive programming credit
10 award resulted in more than twice as many credits being awarded to the incarcerated
11 population than in the previous year, even though the incarcerated population was 22%
12 smaller at the end of 2020 than it was in 2019. This data is reflected in the document
13 attached as Exhibit A. Although CDCR does not contemplate awarding another round of
14 positive programming credits at this time, it is increasing good time credit earning rates for
15 certain people, including people serving sentences for violent offenses, and people serving
16 sentences for nonviolent offenses with second- and third-strike enhancements. CDCR
17 expects this increase will have a significant impact on the incarcerated population's ability
18 to earn credits, and hopes to implement the new credit-earning policy by this summer.
19 Additionally, due to reduced movement and programming in accordance with COVID-19
20 safety measures, incarcerated people have been completing coursework for milestone and
21 education programs on their own time, outside a classroom setting. When classes resume,
22 incarcerated people may submit their completed work and take tests to earn credits.

23 Testing is already underway at institutions where programming has resumed. CDCR
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25 _____
26 policy on awarding credits to incarcerated persons. He will also be available to answer any
27 additional questions the Court may have regarding information that has not already been
28 provided in the current statement, earlier Case Management Conferences, or the *in camera*
meeting.

1 expects this will result in significant milestone and education credit awards.

2 **III. QUARANTINE AND ISOLATION**

3 *Plaintiffs' Position:* As reported in the last Case Management Conference
4 Statement, CCHCS administrators recently undertook a prison-by-prison review of the use
5 of quarantine status and the set-aside space. The review documented a significant decrease
6 in the number of people on quarantine: as of March 18, CCHCS reported 5,097 on
7 quarantine, of which about 2,000 were on quarantine due to exposure to COVID-19.
8 *Compare* ECF No. 3558 at 6 (March 2, 2021 Joint Case Management Conference
9 Statement) (“more than 9,000 people remained on quarantine as of February 25, despite
10 active case numbers of fewer than 500”). We are glad to see a decrease in the number of
11 patients on quarantine due to possible exposure to COVID-19, and believe it is appropriate
12 given the significant decrease in active cases among the incarcerated population.¹⁰

13 A large number of those on quarantine as of March 18 were in precautionary, post-
14 transfer quarantine (3,032 out of 5,097). This includes new arrivals from county jails and
15 transfers from reception centers to other prisons, among others. The issue of providing
16 appropriate quarantine space for these transfers is discussed further in Section V, below.

17 As explained in previous Case Management Conference Statements, Plaintiffs
18 remain concerned about the use of punitive measures against people who refuse to comply
19 with health-related bed moves and, in particular, the issuance of Rules Violation Reports

21 ¹⁰ We note here that the number of active cases reported on the CDCR Population
22 COVID-19 Tracking website does not include patients who are “re-positive,” a term used
23 for those who test positive after an initial infection is deemed resolved. CCHCS says a
24 “re-positive” may not be a “re-infection,” even though some test positive months after the
25 initial infection and after repeatedly testing negative in the interim. Although not counted
26 as active cases, “re-positive” patients and their close contacts are housed exactly as if they
27 were active cases: the positive-testing patient is placed on medical isolation for at least 14
28 days and all contacts, including at times entire large dorms, are placed on
quarantine and subjected to testing for the same period. CCHCS reports there are currently
288 “re-positive” patients and that it is considering how to determine if these patients are
in fact re-infected.

1 (RVRs) to people who refused such moves during the surge several months ago.
2 Defendants have acknowledged that they issued RVRs to 83 people at one prison for
3 refusing these moves during this period, while at three other prisons, people who refused
4 instead received counseling chronos. The one prison's heavy-handed response raises
5 concerns about fairness and equity. ECF No. 3558. Some we spoke with who had
6 received RVRs raised plausible concerns about significant safety risks if they were to
7 comply with the orders, some raised legitimate concerns that further movement would
8 cause wider spread of the virus, while others described receiving inconsistent messages
9 regarding the necessity for the moves.

10 On February 11, we requested a list of all people who were issued an RVR in the
11 previous 90 days for failure to comply with a COVID-related housing move, and for the
12 dismissal of those RVRs. After we made this request, Defendants issued a February 24
13 memo "to standardize a process to address inmates who refuse to comply with direction to
14 move" to housing as recommended by health care staff based on COVID-19 protocols, to
15 document noncompliance with a counseling chrono, and, if necessary, to use "progressive
16 discipline . . . in accordance with" California regulations for disciplinary methods. On
17 February 26, after receiving this new directive, we requested that Defendants also provide
18 information on whether people who had received RVRs during the relevant period for bed
19 move refusals were first provided 128Bs (general chronos) demonstrating that they had
20 been counseled about the bed moves.

21 Defendants responded on March 22 that "it is not CDCR's position to rescind RVRs
22 for refusing a housing move," and they do not have "an automated report to reference"
23 who received a 128-B before receiving an RVR for refusing these moves. It thus appears
24 that Defendants cannot show they issued chronos to people before issuing RVRs, in accord
25 with the February 24 memo.

26 Defendants also stated they could not provide a list of people who received an RVR
27 for refusing moves that were related to quarantine or isolation orders. They provided
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1 instead a list of all people who received an RVR for “refusing to accept assigned housing-
2 delaying a Peace Officer” regardless of the purpose for the move during the relevant
3 period. We pointed out that Defendants had previously identified 83 people at California
4 State Prison, Los Angeles County who received RVRs for refusing health-related moves,
5 and had asserted that no one at three other prisons received RVRs related to such moves.
6 ECF No. 3558. We asked why CDCR could not do a similar assessment at the remaining
7 prisons, and asked for copies of all RVRs and adjudications for those who received them
8 for refusing a health care related move.

9 Late on March 23, Defendants refused to provide the RVRs, asserting that the
10 request is unreasonable and is “far afield from the confines of this case.” We disagree.
11 Class members have reported that some have been punished for resisting possibly ill-
12 conceived health-related movement orders because they feared for their health and safety.
13 As class counsel, we have a duty to investigate this issue, and we intend to continue our
14 efforts. As Defendants have declined to provide us with critical information, we will
15 assess our options to obtain the necessary information and will update the Court as
16 appropriate.

17 We also continue to urge Defendants to use positive incentives to encourage
18 compliance with health-related housing moves. Defendants stated on March 10 that they
19 had offered 533 extra video visits to people at eight prisons, but none of the visits had
20 actually been completed as of March 5. We asked clarifying questions on March 11, and
21 have not received a substantive response.

22 *Defendants’ Position:* As reported in the prior statement, Defendants continue
23 making efforts to ensure that prisons comply with the Receiver’s isolation and quarantine
24 guidance provided on December 4 and 18, 2020, by closely monitoring the prisons’ use of
25 reserved quarantine space. Additionally, Defendants are awaiting CCHCS’s anticipated
26 “reset” of the Quarantine and Isolation set-aside space. The reset is being considered
27 based on the progress made in vaccinating COVID-naive incarcerated persons, the number
28

1 of incarcerated persons who have recovered from COVID, and the low rates of infection
2 throughout the system.

3 CDCR is also in the process of upgrading its video conferencing platform in
4 response to incarcerated persons selling their visits and visits not being scheduled because
5 the visitor was not pre-approved. A statewide call is being scheduled for this week to
6 discuss the logistics finalizing how to implement the new video visiting system, and part of
7 the discussion will be how prisons should inform incarcerated persons how to schedule
8 visits.

9 Meanwhile, because of the significant reductions in active COVID cases, CDCR is
10 working with CCHCS to restart in-person visits on a limited basis starting April 10,
11 2021¹¹. The visiting protocols will incorporate measures to prevent COVID transmission,
12 including temperature and symptom screenings, COVID-19 testing, physical distancing,
13 required face coverings, limitations on the number of visitors at a given time, and
14 limitations on the duration of visits.

15 Plaintiffs requested data on the number of incarcerated persons who received RVRs
16 for failure to accept housing assignment related to a healthcare-related bed moves. CDCR
17 is able to retrieve the list of incarcerated persons that received RVRs for failure to accept
18 housing assignments, but it is not able to readily separate that data into categories of
19 discipline related to healthcare-related moves versus refusals for a reason unrelated to
20 COVID. As COVID-positive numbers continue to rapidly decline, the need to rehouse
21 inmates for quarantine or isolation purposes should also decline, reducing the instances
22 where an RVR might be issued. In the meantime, the statewide memorandum issued on
23 February 24, 2021, is still in effect and provides uniform guidance for progressive
24 discipline at all institutions.

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¹¹ <https://www.cdcr.ca.gov/news/2021/03/23/california-department-of-corrections-and-rehabilitation-to-begin-phased-reopening-of-in-person-visiting-on-april-10-2021/>

1 **IV. STAFF SCREENING AND TESTING**

2 *Plaintiffs' Position:* Staff testing remains a critical component of preventing the
3 introduction and spread of COVID-19 in the prisons.

4 As reported in the last Case Management Conference Statement, CCHCS recently
5 announced a significant improvement to the staff testing program: beginning March 1, all
6 staff are asked during the entrance screening process whether they have been tested within
7 the prison's current required timeframe, and whether they have experienced symptoms of
8 COVID-19 within the previous 10 days. If the employee reports that they have not been
9 tested within the required timeframe, or reports current or recent symptoms of COVID-19,
10 they are immediately tested onsite via a rapid test. We appreciate these efforts and hope
11 they will both improve compliance with staff testing requirements and reduce the risk of
12 viral infections among residents and other staff.¹²

13 We remain concerned, however, that this process relies entirely on staff self-
14 reporting compliance with the testing policies during entrance screening. We previously
15 raised this concern, and suggested CCHCS also develop systems to independently verify
16 compliance. On March 17, we requested an update on this request. We have not yet
17 received a response.

18 *Defendants' Position:* Defendants continue to enforce the heightened entrance
19 screening protocols developed in coordination with the Receiver's Office and CCHCS,
20 which oversee COVID-19 testing and screening for CDCR employees. These protocols
21 are described in detail in the case management conference statement filed on March 2,
22 2021. (*See* ECF No. 3358 at 13-14.) Defendants are committed to working with their
23 healthcare partners to ensure the safety of all those inside CDCR's institutions with these
24 stringent screening protocols and other safety measures.

25 **V. INTAKE**

26 *Plaintiffs' Position:* CDCR reopened intake from county jails on a limited basis ten

27 _____
28 ¹² We do not know to what degree this has improved compliance as we have not yet
received staff testing data for March.

1 weeks ago. In recent weeks, CDCR has authorized specified counties to send between 470
2 and 590 people per week to the Reception Centers at North Kern State Prison, Wasco State
3 Prison, and Central California Women’s Facility.

4 In order to make space for the people arriving from the counties, Defendants had to
5 transfer large numbers of people from the Reception Centers to other prisons. On March
6 3, the Receiver provided Plaintiffs with a plan for these transfers that CCHCS indicated
7 would be implemented to reduce the risk of COVID spread. We provided comments on
8 the plan on March 9. We did not receive a response. This week, we received information
9 from CDCR that appeared to indicate transfers had been done that were inconsistent with
10 the March 3 plan. We wrote to CCHCS to inquire about these transfers. On March 24,
11 CCHCS informed us that a different plan had been implemented on March 11, and sent the
12 new plan, along with a revised list of post-transfer quarantine spaces at each prison, and
13 responses to our comments on the previous plan. We are reviewing these documents and
14 will raise questions and concerns with the Receiver and Defendants.

15 Regarding the quarantining of new arrivals from the county jails in the Reception
16 Centers, we recently learned that, in mid-February, CCWF began using eight-person
17 dormitories to house people arriving from the county jails. We raised concerns about this
18 practice, noting that the Movement Matrix provides that quarantines should be completed
19 in a single cell, and cohorting can only be done if “essential,” with cohorts that are “as
20 small as possible (2-4 persons).” We were informed CCWF was housing no more than
21 four people in each dormitory. However, on March 12, after reviewing the records of a
22 recent arrival who tested positive for COVID-19 and appeared to have had seven dorm-
23 mates while on quarantine, we raised the concern that the cohorting was not happening as
24 directed. On March 19, CDCR confirmed that while the directive to cohort all new intake
25 in groups of four or fewer had been given, it had not been followed at CCWF. CDCR
26 stated that CCWF re-housed the approximately 100 people still on intake quarantine into
27 cohorts of four or fewer on March 12, and that the population report would be reviewed
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1 daily to ensure this directive is adhered to for future intake. We appreciate Defendants'
2 candor and quick response to address these concerns, including in particular the plan to
3 monitor this issue to ensure new arrivals to CCWF are appropriately housed. We are
4 concerned, however, that neither CDCR nor CCHCS were aware of this problem before
5 we brought it to their attention.

6 *Defendants' Position:* CDCR continues to perform intake on a limited basis.
7 Incarcerated persons who meet the intake criteria are housed in reception centers and are
8 only moved to receiving institutions with CCHCS oversight and approval. Presently, there
9 is no requirement that persons accepted from the counties be vaccinated before transfer to
10 CDCR. But CCHCS and CDCR monitor whether new residents have received the vaccine,
11 and if so, how many doses. CDCR completes the vaccination of new patients in
12 accordance with public health guidelines and based on their eligibility in appropriate
13 priority groups.

14 CDCR accepted 476 incarcerated persons from county jails for the week of March
15 8, 2021, and 425 for the week of March 15, 2021. For the Week of March 22, 2021,
16 CDCR has authorized intake of 590 incarcerated persons from county jails, and 580 for the
17 week of March 29, 2021.

18 VI. VENTILATION

19 *Plaintiffs' Position:* On March 7, a multidisciplinary team of experts from AMEND
20 at UC San Francisco and UC Berkeley Schools of Public Health and Public Policy gave a
21 presentation to the parties regarding ventilation and COVID-19 spread in housing units at
22 the Substance Abuse Treatment Facility and State Prison at Corcoran (SATF). The
23 presentation was based on a December 2020 site visit to the prison.

24 The experts found that COVID-19 spread last fall through all types of SATF
25 housing units, whether large dorms, buildings with smaller (six to eight person) dorms, or
26 those in which one or two people were housed in cells with solid doors. Statewide, it was
27 determined that the large outbreaks late last year mostly occurred not in dorms or
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1 cellblocks with barred doors, as in the earlier part of the year, but in units with solid door
2 cells. The experts said this shift may have been due to the use of recirculated heated air in
3 the units during cooler weather. The experts further described “critical” space and staffing
4 shortages during its outbreak and noted that the prison’s ventilation system may have been
5 designed for the stated capacity, not the actual current population. Among other things,
6 the experts said SATF’s outbreak likely resulted from movement of patients in isolation or
7 quarantine, and “some combination of poor air exchange, recirculation, and unbalanced
8 ventilation/pressurization” in those systems, and shared staff between units with active
9 cases and those which had none.

10 With regard to ventilation, the experts reported that its tests of four SATF housing
11 units showed air exchange rates far below those recommended by the World Health
12 Organization (WHO) for reduction of aerosol transmission of virus. The experts also
13 found that the prison used air filters of a lower grade than recommended by the Centers for
14 Disease Control for viral capture, and that the ventilation system was poorly functioning,
15 thus promoting virus spread. In short, the experts’ findings showed that SATF cellblocks,
16 even with solid doors, functioned as de facto dorms with regard to aerosol virus spread.

17 The experts said that to meet WHO minimum standards for containing airborne
18 infection, housing density must be substantially reduced in all SATF buildings. Each
19 SATF large dorm, which can house approximately 50 people each, should house only
20 three. Its small dorms, which house six people each, and its solid-door cells, which
21 currently mostly house two people each, should each house only one person.

22 The experts recommended, among other things, population reduction, the urgent
23 hiring of a HVAC specialist to re-evaluate and re-balance SATF’s ventilation system,
24 implementation of COVID-19 tests with a turnaround time of less than 24 hours, and the
25 development and implementation of plans for stable cohorts of residents, custody, and
26 healthcare staff.

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1 We understand that the Receiver will both take and recommend action in response
2 to the experts' report, including determining whether experts should review other prisons'
3 housing unit ventilation systems. We believe this should occur. We also believe CDCR
4 should immediately hire a HVAC specialist at SATF, as recommended by the experts.

5 *Defendants' Position:* Recognizing that ventilation plays a role in the health of
6 CDCR's incarcerated and staff populations, CDCR has continued to monitor and evaluate
7 housing unit ventilation consistent with internal guidance regarding maintenance and
8 repair of heating, ventilation, and air conditioning (HVAC) units, and indoor ventilation
9 during COVID-19. Since December, four institutions (Chuckawalla Valley State Prison
10 (CVSP), High Desert State Prison (HDSP), North Kern State Prison (NKSP) and the
11 Richard J. Donovan Correctional Facility (RJD) have installed MERV-13 filters in their
12 housing unit air handling units. Even though the nationwide high demand for MERV-13
13 filters is delaying delivery and installation at other institutions, many have installed partial
14 shipments of MERV-11 and MERV-13 filters to increase filter efficiency. MERV 13
15 filters are more efficient at filtering out small particles and contaminants than the current
16 MERV 8 and 10 filters that are used at most institutions. Because certain facilities at
17 certain institutions utilize only outside air and not HVAC systems or recirculated air, they
18 do not require filter upgrades, but airflow will continue to be monitored in these areas.
19 Additionally, some institutions have increased the percentage of outside air as they were
20 directed to do in December 2020.

21 On February 26, 2021, the Director of CDCR's Division of Facility Planning,
22 Construction, and Management convened a ventilation workgroup with the Receiver's
23 Office, CCHCS, and CDCR's Division of Adult Institutions to create a collaborative
24 channel of communication on the topic of ventilation. Currently, the Director's staff is
25 examining ventilation systems in areas used for quarantine and isolation and creating
26 diagrams of the airflow in these areas. These diagrams will be provided to CCHCS and
27 CDCR's Division of Adult Institutions so that they may collaboratively evaluate the
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1 airflow in these spaces and draw appropriate conclusions.

2 Separately, CDCR is undertaking a system-wide inspection and evaluation of
3 ventilation systems in CDCR's institutions, focusing on whether the airflow is working the
4 way it is supposed to. The inspection will be performed by CDCR Plant Operations
5 professionals and will include visual inspections of air handling units, ducts and grills, and
6 will measure air flow at multiple locations within the ventilation system. Inspections will
7 be done in accordance with best practices set forth by the Centers for Disease Control and
8 Prevention and the American Society of Heating, Refrigerating and Air-Conditioning
9 Engineers. CDCR expects to complete these inspections in May 2021. Their findings will
10 be used to identify and prioritize ventilation system repairs to identify any additional steps
11 that can be taken to minimize COVID-19 transmission using the design operation of
12 existing ventilation systems.

13 Plaintiffs accurately summarize part of the presentation AMEND gave on their
14 investigation of SATF's ventilation system. In addition to their recommendations to
15 decarcerate, evaluate SATF's ventilation system, and reduce COVID-19 test result
16 turnaround times, AMEND also recommended improving outbreak and emergency
17 planning and response efforts; developing communication plans that include medical staff,
18 custody staff, and residents; and promoting a culture that encourages learning,
19 participation in public health measures, and health and wellness. As reported in numerous
20 prior statements, CDCR has worked hand in hand with the Receiver's Office and CCHCS
21 to respond to the COVID-19 pandemic, and has made efforts to implement each of the
22 Receiver's COVID-19 safety protocols. CDCR implemented robust emergency response
23 plans by creating incident command posts at each institution, which served as
24 communication centers for COVID-19 mitigation and response efforts on a day to day
25 basis, were staffed by both custody and healthcare staff at each institution, and sometimes
26 solicited the aid of outside agencies. CDCR continues to find ways to promote the health
27 and wellness of its incarcerated population by making efforts to provide as much outdoor
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1 time as is safely possible, implementing video visits, and providing education regarding
2 the benefits of following COVID-19 measures, among many other measures.

3 The AMEND team's conclusions regarding how COVID-19 *may* have been
4 transmitted in housing units at SATF were based on a number of hypothetical scenarios.
5 When asked if it is possible to measure the movement or presence of virus particles in a
6 ventilation system, the AMEND team responded that they are not aware of any methods
7 being used widely to date, but that it is usually done through gas tracer studies. They
8 added that there are methods to measure aerosolized particles the same size of a virus,
9 which could be used. These methods were not used as part of AMEND's investigation of
10 SATF's ventilation system. And notably, the investigation in December 2020 was done
11 during a nationwide surge in COVID-19 cases, which has since subsided.

12 CDCR appreciates the efforts of public health experts to assist with its COVID-19
13 response efforts. As described above and in previous statements, CDCR is committed to
14 keeping its residents safe. To that end, its work to evaluate and improve its ventilation
15 systems, where needed, is already underway. Defendants look forward to their continued
16 collaboration with the Receiver's Office, CCHCS, and public health experts to achieve the
17 shared goal of keeping CDCR's incarcerated and staff populations safe.

18 **VII. OIG REPORT REGARDING FACE COVERING AND PHYSICAL**
19 **DISTANCING MONITORING**

20 The parties received the Office of Inspector General's report on Face Covering and
21 Physical Distancing Follow-Up monitoring at about 12:30 p.m. on March 24, 2021. The
22 parties are in the process of reviewing this report. It is attached as Exhibit B at the OIG's
23 request.

1 DATED: March 24, 2021

HANSON BRIDGETT LLP

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