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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.

CASE NO. 01-1351 JST

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: July 2, 2020

Time: 3 p.m.

Crtrm.: 6, 2nd Floor

Judge: Hon. Jon S. Tigar

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

3 **I. Population Reduction**

4 *Plaintiffs' Position:* As the Court catalogued in its recent Order to Show Cause, the
5 virus is spreading throughout the state and there have been serious outbreaks at several
6 prisons, most notably and recently at San Quentin. ECF No. 3366 at 3. As of today, only
7 11 prisons have not had an incarcerated person test positive for COVID-19. CDCR,
8 *Population COVID-19 Tracking*, [https://www.cdcr.ca.gov/covid19/population-status-](https://www.cdcr.ca.gov/covid19/population-status-tracking)
9 [tracking](https://www.cdcr.ca.gov/covid19/population-status-tracking) (last visited July 1, 2020). Those include two with extremely vulnerable
10 populations, California Medical Facility (CMF) and California Health Care Facility
11 (CHCF), and one, Folsom State Prison, with the same five-tiered open cell door
12 construction as San Quentin.

13 In response to the outbreak at San Quentin, a team of UCSF and UC public health
14 experts evaluated the conditions at that prison and found that “profoundly inadequate
15 resources” prevented prison officials from stopping the outbreak from becoming a local
16 epidemic in the prison and surrounding communities. Williams & Bertozzi, Urgent Memo
17 COVID-19 Outbreak: San Quentin Prison, June 13, 2020. In addition, “San Quentin’s
18 antiquated facilities and severe overcrowding places the prison at high risk of significant
19 COVID-19 related morbidity and mortality unless the population is quickly reduced by
20 50% or more. . . .” *Id.* Providing appropriate housing for hundreds of individuals to
21 prevent infection by separating people who test positive from those who test negative is
22 impossible because there is no available space at the prison, and transfers to other prisons
23 have been halted. The tents that are being erected have the capacity to house only 60-100
24 persons.

25 The UCSF/UC team believes that its recommendations are applicable to all
26 California prisons. *Id.* To date, CMF, CHCF and Folsom have been fortunate not to have
27 a detected a confirmed case of COVID-19 among the incarcerated population, despite staff
28

1 at those facilities testing positive. But, as the Court noted, this virus spreads quickly. ECF
2 No. 3366 at 3. And the prediction made months ago by former CDCR Secretary Scott
3 Kernan that our prisons are “tinderboxes” tragically has come true. ECF No. 3221-2 at 68;
4 ECF No. 3249 at 5:22-25-6:1.

5 Given the absence of any completely reliable method of preventing the virus from
6 spreading, there is every reason to believe that infections will occur at these prisons as
7 well. Before that happens, it is critical and potentially life-saving for urgent measures to
8 be taken at these prisons to prevent another “local epidemic” that will overwhelm the
9 prisons and the communities in which they are situated. Similar action must also be taken
10 at other prisons where deadly outbreaks have continued for months and it is clear that
11 appropriate housing cannot be provided to all (see for example the discussion below
12 regarding the California Institution for Men).

13 In addition to other measures that are being taken, CDCR must expand its
14 Community Release Program to include those individuals living in these prisons who are
15 at high risk of serious complications and death from the virus and low risk to public
16 safety.¹ Based on the most recent data that Plaintiffs have, there are approximately 1343,
17 1812, and 352 individuals categorized as high risk medical² at CMF, CHCF and Folsom,
18 respectively. Of those, 978, 1380, and 256 are a low risk to public safety if released.

19 The time for action is now, not after the next outbreak occurs. The Court’s
20 observation that “every day counts” could not be more true. ECF No. 3366 at 3.

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22
23 ¹ On or about June 30, 2020, CDCR’s revised or clarified its program such that, apparently,
24 people will not simply be removed but actually released from prison and formally placed
25 on parole or county supervised probation. If so, those released would be eligible for public
26 benefits, including Medi-Cal, which may not have been the case if they were simply
27 removed from prison. It is not clear how many people are being released in the first week
28 of the program.

² The category “high risk medical” is not identical to the category of people who are
believed by the Centers for Disease Control and Prevention (CDC) to be at high risk for
serious complications or death from COVID-19, but Plaintiffs do not currently have the
data showing both CDC high-risk and public safety low-risk factors.

1 *Defendants' Position:* CDCR's new plan to reduce the population by providing
2 offenders release to supervision in the community is underway. The counties where these
3 releases will occur, and the county probation departments that will be responsible for
4 supervising these individuals, are a crucial component of the release plan. CDCR's county
5 partners are working on verifying the inmate's release plans, which is a required
6 component of eligibility, and will be essential for the success of these individuals during
7 their post-release community supervision. It is possible that a small number of releases
8 might occur over the next week, but it will likely be another 10-12 days before meaningful
9 numbers of releases occur.

10 The new release plan is not comprised of a single release cohort. Instead, once
11 releases under the new plan have commenced, they will continue indefinitely on a rolling
12 basis until the COVID crisis abates.

13 **II. Intake**

14 *Plaintiffs' Position:* On June 29, 2020, we were informed by the Receiver that
15 intake has been closed. We strongly support this decision. We continue to believe that
16 intake should be suspended until CDCR completes the process of moving medically
17 vulnerable people to cells, transfers can be accomplished safely, and the population
18 decreases to the point that social distancing can be safely practiced and prisons have
19 sufficient space to use for isolation and quarantine in the event of an outbreak.

20 *Defendants' Position:* CDCR was previously conducting a limited intake from the
21 county jails of about 50 inmates per week. But as of June 29, in cooperation with the
22 Receiver, CDCR closed all intake from the counties until at least July 27.

23 **III. Transfers**

24 *Plaintiffs' Position:* CCHCS continues to work on revisions to its COVID-19
25 testing and transfers protocol or policy, undertaken after the transfer of patients from
26 California Institution for Men to San Quentin apparently resulted in the start of what has
27 now become a mega-outbreak. CCHCS has reported that these revisions are part of a
28

1 broader review and revision of all COVID-19 testing policies. A date for completion of the
2 revision is not yet known. CCHCS has also reported that, since June 19, 2020, there have
3 been no inter-prison transfers except for those necessary for essential healthcare or other
4 emergencies. CCHCS earlier this week it said it did not know how many such transfers
5 took place last week (June 21 – 27).

6 Revision of the testing and transfers policy remains necessary, and the prohibition
7 on transfers except when necessary for essential healthcare or other emergencies must
8 continue until the revised policy is completed, piloted, and fully implemented. Since the
9 most recent Case Management Conference, persons transferred on June 8, 2020, from San
10 Quentin, who had tested negative for COVID-19 six days before being moved, apparently
11 were not quarantined upon arrival to the California Correctional Center (CCC) in
12 Susanville, but placed in a dorm and mixed freely with large numbers of people on the
13 yard.³ The patients were not re-tested again for COVID-19 until June 18, 2020, after
14 Plaintiffs asked if such had been done, and they were confirmed to have COVID-19. This
15 policy failure resulted in another major outbreak, with 215 confirmed cases at the prison
16 (see further discussion of CCC below).

17 *Defendants' Position:* Under the Receiver's instructions, inter-prison transfers
18 remain suspended, with the exception of essential movement of inmates. Approved
19 essential movements, include, but are not limited to: inmate transfers to outside medical
20 facilities for emergent and specialty services that cannot be safely deferred; admissions to
21 and discharges from the Correctional Treatment Center, Outpatient Housing Unit, and
22 hospice; movement between general population housing and restricted housing; selected
23 movements of mental health patients; and Disability Placement Programs/ Developmental
24 Disability Program movements from a non-designated institution to a designated

25 _____
26 ³ Plaintiffs both last week and this week asked CCHCS to confirm that the three
27 patients transferred were not kept apart from others in the ten days after they arrived at
28 CCC. On June 30, 2020, we were told that the CCC's Healthcare Chief Executive Officer
had not yet provided a response to Headquarters.

1 institution to prevent morbidity/mortality. Defendants can provide a complete list of
2 approved essential movement upon request.

3 **IV. Safely Housing Medically Vulnerable People**

4 On June 24, CDCR provided an analysis of CDCR's cell capacity, which was
5 prepared by CDCR's Division of Adult Institutions in consultation with CCHCS, plus a
6 report that set forth the number of empty cell beds at the respective institutions and the
7 number of medically high-risk incarcerated patients at each listed institution.

8 *Plaintiffs' Position:* People with medical conditions or who are of an age that make
9 them at risk for severe complications if infected with COVID-19 remain in CDCR's
10 crowded dorms throughout the state where, the Receiver has determined, they are at
11 significantly higher risk of contracting the disease than they would be if housed in cells.
12 Although the parties reported in the last Case Management Conference Statement having
13 reached an agreement in principle on a plan to move as many medically vulnerable patients
14 from dorms to cells as possible and to prioritize moving the most elderly, this plan has not
15 been implemented.

16 The Receiver has determined that transfers between prisons are too dangerous at
17 this time, so any movement from dorms to cells can happen only at prisons that have both
18 dorms and cells. Thus, CDCR provided Plaintiffs an analysis of cell beds available in
19 prisons that have both cell and dorm living. The data produced demonstrates that the
20 movement of vulnerable medical patients from dorms to cells within their current prison as
21 a means of protecting the medically vulnerable will be of limited or even very limited
22 effectiveness because the system is too overcrowded. First, there are not enough available
23 beds in cells in many prisons with the most vulnerable patients. For instance, according to
24 the data produced by Defendants, there are currently 666 high risk medical patients at
25 California Health Care Facility (CHCF) who are residing in dorms, of whom 414 have a
26 COVID-weighted score of over 4. Even assuming that these patients could be housed in
27 any available cell – which is not the case given program restrictions (discussed below) –
28

1 Defendants report only 203 beds that are empty and available. This leaves over half the
2 patients with COVID-weighted scores over 4 in their current dorm arrangements.
3 Similarly, with 1054 high risk patients, of whom 540 have a COVID-weighted score over
4 4, Mule Creek State Prison has only 454 cells available. California Rehabilitation Center
5 (CRC) currently has an outbreak, with 103 active cases. That prison has 578 high risk
6 patients, of whom 39 have a COVID-weighted score of over 4, yet there are no cells at that
7 prison.

8 Even in a scenario where there are “enough” cell beds empty and available to
9 accommodate vulnerable patients living in the dorms, many, if not most, of these cell
10 moves would not be feasible. According to the Defendants, “while it may appear that
11 there are abundant cells available for housing medically high-risk dorm inmate-patients, it
12 is important to note that many of the identified empty cell beds are not appropriate for
13 particular inmates for various reasons.” For instance, among the “empty” cell beds
14 identified for CMF, the list includes ICF, CTC, and MCB, which are specialized mental
15 health beds likely not appropriate for long term use by medically vulnerable patients. At
16 all of the prisons, it is likely that at least half, and probably much more than half, of the
17 available cell beds are upper bunks, and thus cannot be assigned to people with certain
18 mobility impairments. Finally, at prisons like R.J. Donovan, where most of the available
19 cells are either on a Sensitive Needs Yard or an Administrative Segregation Unit, patients
20 will have a huge disincentive to accepting the cell move. Defendants lack sufficient space
21 to place medically vulnerable people in safe and appropriate housing during this pandemic.

22 *Defendants’ Position:* Defendants are in the process of confirming the accuracy of
23 the numbers reported by Plaintiffs above. CDCR’s Division of Adult Institutions is ready
24 to facilitate moves of medically high-risk patients from dorms to cells within the same
25 institution once CCHCS has provided DAI with a list of patients who, after patient
26 education has been provided to them, have agreed to move from their current dorm to a
27 cell.

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1 **V. COVID-19 Testing**

2 **a. Staff Testing**

3 *Plaintiffs' Position:* As noted in this Court's June 28, 2020 Order to Show Cause
 4 re: Baseline Staff Testing for COVID-19, CDCR's plan for staff testing does not call for
 5 baseline testing of all staff. ECF No. 3366 at 2. In their June 30, 2020 response to the
 6 Order, Defendants state that CDCR has "decided to change course and now plans to
 7 conduct baseline staff testing at each institution" and plans to complete doing so by July
 8 16, 2020. ECF No. 3368 at 3. We agree baseline testing of all staff must be done as soon
 9 as possible.

10 As to the remainder of CDCR's plan—which outlines what testing will be done in
 11 response to an outbreak, and the parameters for surveillance testing of staff—we continue
 12 to have significant concerns. We have consulted with Professor Adam Lauring, M.D.,
 13 Ph.D., a board-certified medical doctor in Infectious Diseases,⁴ and reviewed existing
 14 public health guidance for COVID-19 testing in congregate settings, including guidance
 15 issued by the Centers for Disease Control and Prevention (CDC) for nursing homes and
 16 homeless shelters, and guidance issued by the California Department of Public Health
 17 (CDPH) for skilled nursing facilities. CDCR's plan departs from these guidelines in
 18 significant, concerning ways.

19 Symptomatic Testing: CDCR's plan does not call for testing symptomatic staff. It
 20 states that "[a]ll staff should be screened for fever, respiratory symptoms, or other
 21 symptoms before entering any institution each day," and "[p]ersonnel who develop fever,
 22 respiratory symptoms, or other symptoms should be instructed not to report to work." ECF
 23 No. 3356-1 at 3. Staff who have symptoms must be tested so appropriate outbreak testing
 24 and contact tracing can be done at the prison.

25 Outbreak Investigations: The testing proposed in the event of an outbreak is too
 26

27 ⁴ Dr. Lauring's biography and qualifications are available here:
 28 <https://medicine.umich.edu/dept/microbiology-immunology/adam-lauring-md-phd>.

1 limited. Regarding the scope, all staff should be retested when there is a new outbreak at a
2 prison. This is consistent with recommendations from the CDC for nursing homes, as well
3 as the recommendations from the CDPH for skilled nursing facilities. Instead, CDCR's
4 plan calls for limiting outbreak testing to a particular yard where the staff person worked
5 or incarcerated person lived. *See* ECF No. 3356-1 at 5. But, as this Court stated in the
6 June 28 Order to Show Cause, "although the Receiver has recommended consideration of
7 staff cohorting so that staff interact only with limited groups of inmates, no such cohorting
8 has been implemented." ECF No. 3366, n.2. And, as explained in our portion of the last
9 CMC Statement, even if staff do not work on the same yard, they are likely to interact with
10 each other during shift change, in carpools, and outside of work, as many staff members
11 live and recreate in the same communities. ECF No. 3355 at 6.

12 Regarding the frequency of testing during an outbreak, CDCR's plan calls for
13 testing to be done every 14 days during an outbreak. ECF No. 3356-1 at 5. This is
14 significantly less frequent than what is recommended for other congregate living
15 environments. During an outbreak, the CDC recommends retesting nursing home staff
16 every 3 to 7 days, and homeless shelter staff every 7 days. The CDPH likewise
17 recommends retesting skilled nursing facility staff every 7 days. Given how quickly the
18 virus can spread in an outbreak, including through asymptomatic people, we believe
19 CDCR should adopt a similar standard.

20 Surveillance Testing: Plaintiffs believe the proposed surveillance testing for most
21 prisons—10% every 14 days—is insufficient. Public health guidelines for skilled nursing
22 facilities and nursing homes call for surveillance testing of all staff either weekly or
23 monthly. We are unaware of any public health guidance endorsing a lower standard for
24 long-term congregate living environments. During our meet-and-confer with Defendants
25 on June 5, we asked the public health department official how 10% every 14 days was
26 selected for surveillance, but counsel for Defendants would not allow any response. We
27 later asked this question again in writing. In response, Defendants stated only that:
28

1 “CDCR determined the frequency/scope of surveillance staff testing through consultation
2 with the California Department of Public Health, which recommended the adopted testing
3 frequency.” We do not know what the reasoning was for this decision, but, given
4 Defendants’ reluctance to respond, we are skeptical that it was based on public health
5 guidelines.

6 Regarding the medically vulnerable, CDCR’s current plan calls for monthly
7 surveillance testing of staff regularly assigned to outpatient medical or mental health
8 housing units, and staff working at California Medical Facility (CMF), Central California
9 Women’s Facility (CCWF), and California Health Care Facility (CHCF). ECF No. 3356-1
10 at 1. We believe heightened surveillance testing of staff should also be done at other
11 prisons with large populations of medically vulnerable and elderly people, including San
12 Quentin (SQ), the California Institution for Men (CIM), Mule Creek State Prison (MCSP),
13 and Richard J. Donovan Correctional Facility (RJD). According to the May 2020
14 Dashboard, SQ had 1,196 patients classified as high risk for medical care purposes; CIM
15 had 1,554; MCSP had 1,863; and RJD had 1,426.

16 Regarding staff working in high risk environments, CDCR’s plan calls for monthly
17 testing of staff regularly assigned to transport duty, or as guards for patients in the hospital.
18 ECF No. 3356-1 at 2-3. Given the risks that these officers will contract COVID-19 during
19 transport or at the hospital, we believe they should be tested more frequently—at least
20 once a week. We also believe these testing requirements should apply to any staff member
21 who works such a shift, not just those who are “regularly assigned” to do so.

22 Finally, regarding staff living in communities with high rates of COVID
23 transmission, CDCR’s plan states that the “State may adjust the scope and frequency of
24 staff testing based on community spread data and prevalence of the virus in the
25 community.” ECF No. 3356-1 at 3. However, on June 27, 2020, in response to Plaintiffs’
26 question, Defendants said no adjustments were currently planned for any prison under this
27 provision. We are concerned by this response: as of today, 49 of the 58 California counties
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1 reported more than 25 new cases per 100,000 residents in the prior 14 days. *See Tracking*
2 *the Coronavirus in California*, L.A. Times, [https://www.latimes.com/projects/california-](https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak)
3 [coronavirus-cases-tracking-outbreak](https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak) (last visited July 1, 2020). Numerous prisons are
4 located in counties reporting some of the highest rates for new cases, including Imperial
5 County (CAL, CEN), Lassen County (CCC, HDSP), Los Angeles County (LAC), and
6 Kings County (ASP, COR, SATF). *Id.*

7 We requested to meet and confer with Defendants regarding their plan for staff
8 testing before the last Case Management Conference, but received no response. After the
9 Case Management Conference, on June 23, 2020, we renewed our request for a meet and
10 confer, and asked that it be scheduled in advance of the filing of this Statement. On June
11 29, 2020, Defendants responded, and informed us that they could not meet until July 1 at
12 3:30. We therefore anticipate we will have met before this Case Management Conference
13 and may have further updates for the Court.

14 *Defendants' Position:* The California Department of Public Health (CDPH) has
15 indicated it will be providing additional guidance for CDCR's staff testing plan, and
16 CDCR looks forward to receiving CDPH's recommendations. Even though a state-wide
17 staff-testing plan has not yet been finalized, CDCR has conducted testing of numerous
18 staff throughout the system, and CDCR will move forward with baseline testing at all
19 prisons while the details of the staff-testing plan are worked out in cooperation with
20 CDPH. To date, the following staff testing has occurred:

- 21 • 1,603 staff tested at California Institution for Men in May and June;
- 22 • 1,725 staff tested at San Quentin in mid-June and retesting of all San Quentin
23 staff is scheduled to begin June 30, 2020;
- 24 • 1,949 staff tested at Corcoran in mid-June;
- 25 • 286 staff tested at California Institution for Women on June 8, 2020;
- 26 • 380 staff tested at California Men's Colony on June 11, 2020;
- 27 • 1,164 staff tested at Avenal State Prison in late May and serial testing at
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1 Avenal commenced on June 23, 2020;

- 2 • 1,939 staff tested at California Medical Facility from June 24-30, 2020;
- 3 • 2,959 staff tested at California Health Care Facility from June 24-30, 2020;
- 4 • 1,018 staff tested at Central California Women’s Facility from June 26-30,
- 5 2020; and
- 6 • 1,142 staff tested at California State Prison, Solano from June 26-30, 2020.

7 Furthermore, testing of all staff at California Correctional Center is scheduled to
8 commence on July 1, 2020, and serial testing at that institution is scheduled to begin on
9 July 15, 2020. Finally, testing of all staff at High Desert State Prison is scheduled to
10 commence on July 1, 2020. In the meantime, CDCR is working on finalizing contracts for
11 baseline testing of all staff at the outstanding prisons, and anticipates that all baseline
12 testing should be completed by July 16, 2020.

13 CDCR’s Office of Labor Relations has not yet engaged in formal negotiations with
14 the California Correctional Peace Officers’ Association (CCPOA) on staff testing, but has
15 been in contact with CCPOA officials regarding that issue. On June 30, 2020, CCPOA
16 filed a status report regarding staff testing in which it identified “five components” that
17 would increase the efficiency and effectiveness of COVID-19 testing. The first component
18 was to conduct testing at the place of employment. It is already CDCR’s practice to
19 conduct COVID-19 staff testing at the institutions where the employees work. For
20 example, the baseline staff testing that CDCR will be completing at all institutions will
21 take place at those institutions.

22 Likewise, CDCR’s staff-testing practices already satisfy the second, third, and fifth
23 components identified in CCPOA’s filing, which include testing staff when they are on
24 duty, conducting the testing at no cost to the staff members, and safe guarding staff
25 members’ personal medical information.

26 Finally, CDCR’s policies concerning COVID-19 positive staff largely satisfy the
27 CCPOA’s fourth component, which suggests that COVID-19 positive staff should be
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1 placed on paid administrative leave. Under CDCR's policy:

- 2 • If an employee tests positive for COVID-19 they are placed on paid
3 administrative time off for up to 14 days;
- 4 • If an employee reports to work and does not pass the COVID-19 screening
5 they are sent home and placed on paid administrative time off for that day
6 (any time thereafter would be supplemented by their existing leave credits or
7 would be considered unpaid leave);
- 8 • If an employee stays home sick and uses accrued leave time, and then later has
9 a positive result for COVID-19, the leave time will be restored and the
10 absence will be considered paid administrative time off for up to 14 days; and
- 11 • For a COVID-19 positive absence exceeding 14 days, the employee may use
12 existing leave credits, apply for leave credits through the Catastrophic Bank
13 Time, or apply for nonindustrial disability insurance and state disability
14 insurance. After that, the employee may apply for emergency administrative
15 time off.

16 **b. Testing of Incarcerated People**

17 *Plaintiffs' Position:* As of July 1, every prison has had at least one incarcerated
18 person and/or staff person test positive. *See* CDCR, *CDCR/CCHCS COVID-19 Employee*
19 *Status*, <https://www.cdcr.ca.gov/covid19/cdcr-cchcs-covid-19-status> (last updated June 30,
20 2020); CDCR, *Population COVID-19 Tracking*,
21 <https://www.cdcr.ca.gov/covid19/population-status-tracking> (last visited July 1, 2020).
22 However, as far as Plaintiffs are aware, baseline testing of the entire incarcerated
23 population had only been done at five prisons: CIM, CIW, ASP, CVSP, and SQ. Plaintiffs
24 believe universal baseline testing of the incarcerated population should be done at all
25 remaining institutions as soon as possible, so CCHCS and CDCR can identify and isolate
26 any positive cases immediately.

27 More broadly, Plaintiffs understand other COVID-19 testing protocols for the
28

1 incarcerated population are being revised, which we believe is past due. We have made
2 clear that many testing guidelines must be made mandatory. For example, in a unit,
3 facility, or prison that has experienced an outbreak, serial re-testing of all who initially
4 tested negative “shall” be done every week or two weeks until no positive cases are
5 identified.

6 **VI. Prison-Specific Updates**

7 **a. San Quentin (SQ)**

8 *Plaintiffs’ Position:* San Quentin is the most recent prison to experience a mega-
9 outbreak, one that as of the end of June resulted in 30 people hospitalized including 16 in
10 intensive care units. CCHCS says it anticipates that at the outbreak’s peak 80 to 100
11 patients may require hospitalization. Meanwhile, at the prison, nursing and custody staff
12 shortages have been so severe that earlier this week medical staff from other Northern
13 California prisons were called in and arrangements for other suppliers of staff are being
14 explored, and the Office of Emergency Services has established a command post to
15 address the disaster. Of greatest concern is that San Quentin is running out of space to
16 adequately separate patients confirmed to have COVID-19, those who may be infected,
17 and those who are neither infected nor suspected of being so. According to CCHCS,
18 temporary tents are being brought in, but at most will house only 100 people, while
19 “hundreds” need to be separated. According to the Receiver, conversations continue with
20 the State regarding the need to reduce the population at San Quentin. To Plaintiffs, such
21 action is imperative and very overdue.

22 *Defendants’ Position:* CDCR has continued to grapple with the outbreak at San
23 Quentin, and is taking measures to address the situation there. Efforts are continuously
24 underway to quarantine exposed inmates and to isolate inmates with COVID-19. Six tents
25 have been erected at San Quentin that can provide additional housing for approximately 60
26 inmates or alternative medical treatment space. In addition, the Fire Marshal evaluated
27 and approved the chapel as additional housing space or alternative medical treatment
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1 space. And a field hospital will be erected on the grounds at San Quentin to provide
2 additional treatment space.

3 CDCR has identified 14 medically high-risk inmates that might be released from
4 San Quentin if their COVID-19 tests come back negative and if it can be verified that they
5 have a residence where they can stay upon release. Other institutions are sending staff to
6 assist at San Quentin and a command center has been established to coordinate the
7 response to the outbreak.

8 Unfortunately, one of CDCR's planned measures—the transfer of a group of
9 medically high-risk inmates to another prison—had to be cancelled at the last minute when
10 two members of the group were found to be positive for COVID-19. But, in coordination
11 with California Correctional Health Care Services, CDCR is considering transferring up to
12 300 inmates who have recovered from COVID-19 from San Quentin to other prisons to
13 reduce the population at San Quentin.

14 **b. California Institution for Men (CIM)**

15 *Plaintiffs' Position:* The mega-outbreak at the California Institution for Men
16 (CIM), which has resulted in 16 deaths, continues three months after its start, even as other
17 prisons which experienced their first cases at the same time have returned to normal
18 operations. In the last approximately two weeks, more than 60 new COVID-19 cases have
19 been identified, about half of which are age 65 or older and thus particularly at risk of
20 severe complications, and there remain more than 500 active cases. As in earlier months,
21 CIM continues to lack adequate space to separate those who are diagnosed with, suspected
22 of having, and who have tested negative for COVID-19. A group of more than 20 patients
23 newly diagnosed with COVID-19 in the last approximately ten days remain in the same
24 dorm as patients who have tested negative because the prison has no appropriate housing
25 available for either group. It is imperative that the State reduce the population at CIM so
26 the outbreak can be safely managed. Also, and just as problematic, CIM has not and
27 according to CCHCS has no plans to re-test every week or two those who have tested
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1 negative, so as to more promptly determine who is infectious and thus isolate them, even
2 though CCHCS guidance says that should be done and CDCR's staff testing plan calls for
3 CIM staff to be re-tested every two weeks. It is imperative that serial re-testing begin
4 immediately.

5 *Defendants' Position:* Following the last case management conference statement,
6 further improvements were made to CIM's Facility A and Facility D dorms, with the
7 following results: On June 17, 2020, CIM completed the configuration of all 8-person
8 cohorts in all Facility D dorms, and marked the boundaries of the cohorts with tape on the
9 floor. With respect to CIM's Facility A dorms, CIM completed marking the floor
10 boundaries with tape for all 8-person cohorts on June 17, 2020. On June 9, CIM
11 completed the installation of Lexan barriers to separate cohorts in the dorms A1, A2, and
12 A3. On June 14, CIM completed the installation of the Lexan barrier in dorm A4. CIM
13 received additional Lexan barriers on June 22, 2020. On June 23, 2020, CIM resumed the
14 installations of the Lexan barriers in dorms A6, A7, and A8. The installations of Lexan
15 barriers in all Facility A dorms were completed on June 28, 2020.

16 **c. California Correctional Center (CCC)**

17 *Plaintiffs' Position:* As explained above, poor policy and poor decisions after the
18 transfer of patients from San Quentin has resulted in a major COVID-19 outbreak at
19 California Correctional Center (CCC), centered in a number of dorms that are pipelines to
20 and from some of CDCR's fire camps, where incarcerated workers are deployed. Many
21 incarcerated people deeply value the camp experience, and those workers are essential to
22 the State's wildfire control efforts, performing hard and essential labor for two dollars a
23 day (plus one dollar per hour when fighting a fire), thus saving the state a reported \$100
24 million dollars a year. Because the outbreak at CCC, a camp hub, imperils the State's fire-
25 fighting capabilities, or threatens to make that far more expensive if non-incarcerated
26 workers had to be hired, extraordinary measures were immediately undertaken, including
27 the special hiring of nurses, to test and monitor those at the prison and the seven camps to
28

1 which people had been transferred. In addition, all staff will be tested and then serially re-
2 tested. Plaintiffs laud these efforts on behalf of the health of the people at CCC and the
3 camps. However, we deplore the fact that similar efforts, including serial re-testing of
4 patients who have tested negative, have not been undertaken at CIM or at the other prisons
5 that have had mega-outbreaks and deaths.

6 **VII. Other Mitigation Efforts**

7 *Plaintiffs' Position:* We appreciate the updates provided below, and intend to
8 discuss these matters with Defendants during the July 1, 3:30 PM meeting.

9 **a. Discipline of CDCR and CCHCS Staff for Failure to Wear Masks**

10 *Defendants' Position:* Staff members who do not comply with the mask wearing
11 expectations set forth in CDCR and CCHCS's June 11, 2020 memorandum will be subject
12 to progressive discipline as outlined in the Department Operations Manual, Chapter 3,
13 Article 22, Employee Discipline policy (unless the staff member at issue has a medical
14 condition that precludes the wearing of facial coverings). The progressive discipline
15 generally consists of four steps: (1) a documented verbal warning, (2) Employee
16 Counseling Record, which is defined as a "written record of counseling, documented on a
17 CDCR Form 1123, between a supervisor and subordinate which provides formal
18 instruction about laws, rules, policies and employer expectations," (3) Letter of Instruction
19 (LOI), which is defined as a "written document, which outlines requirements for an
20 employee to advance his/her job performance or conduct to an acceptable level," and (4)
21 adverse action, which is defined as a "documented action, which is punitive in nature and
22 is intended to correct misconduct or poor performance or which terminates employment."
23 And adverse action can include suspension, loss of pay, and termination, or rejection
24 during probation, dependent on the employee's tenure.

25 As of June 26, disciplinary actions had been taken against approximately twenty
26 CDCR staff members at five institutions for failure to comply with the mask wearing
27 directive. Fourteen of the disciplinary actions consisted of LOIs, three consisted of
28

1 Employee Counseling records, one of them led to on-the-job-training pursuant to CDC
2 form 844, and two of them led to the issuance of a CDCR Form 989 request for internal
3 affairs investigation, which is the first step to be completed prior to issuing an adverse
4 action. Based on information received from CCHCS, as of June 29, disciplinary actions
5 for failure to wear masks or failure to wear a mask correctly had been taken against
6 approximately five CCHCS staff members at four institutions. Four of the disciplinary
7 actions consisted of Employee Counseling Records. For one of them, the Office of Internal
8 Affairs approved a direct adverse action without the need of an investigation.

9 CDCR and CCHCS are working on a memorandum to institution management that
10 reiterates that it is vital that staff adherence to the June 11 directives to protect the health of
11 the staff, their families, the inmate population, and the public, that managers must be
12 vigilant in the enforcement of the face covering expectations, and that managers are
13 expected to utilize the progressive discipline process against staff members who fail to
14 comply with them. Additionally, on June 26, 2020, CDCR and CCHCS issued a
15 memorandum to all staff outlining the use of face coverings in headquarters and regional
16 offices. Non-institutional staff must wear face coverings during the following situations:
17 when interacting in person with any member of the public; working in any space visited by
18 members of the public regardless of whether anyone else is present; in common areas such
19 as hallways, stairways, elevators, and parking facilities; or in any room or enclosed area
20 where other people are present, when unable to physically distance.

21 **b. Provision of Surgical Masks for Incarcerated Workers**

22 *Defendants' Position:* On June 24, CDCR issued a directive to the Wardens and
23 Chief Executive Officers at all institutions that, effective immediately, all culinary inmate
24 workers, laundry inmate workers, ADA inmate workers, and inmate porters must be issued
25 surgical masks to be changed out and disposed of as they become soiled, and that should
26 not be used longer than the duration of one shift.

27 **c. Efforts to Incentivize Social Distancing and Mask Wearing**

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1 *Defendants' Position:* The Division of Adult Institutions has instructed the
2 Warden at all institutions to conduct meetings with the Inmate Advisory Councils to
3 discuss ideas to incentivize social distancing and mask wearing among inmates. Director
4 Gipson is in the process of reviewing the corresponding Inmate Advisory Council minutes
5 to develop ideas. Director Gipson is also considering the ideas for incentives presented by
6 Plaintiffs' counsel. In addition, the Division of Adult Institutions has reinstated food sales
7 at various prisons, which allow inmates to purchase meals, such as pizza, from selected
8 local restaurants, which will be either be delivered to the institutions or distributed at the
9 institutions via food trucks. Further, Director Gipson plans to issue a memorandum to
10 increase the number of quarterly packages inmates can receive. Quarterly packages
11 contain merchandise from authorized private vendors that can be purchased by inmates for
12 themselves or by inmates' family members. Director Gipson is also looking into options
13 to increase the opportunities for inmates to make phone calls. For example, at some
14 institutions, some phones were taken out of service to facilitate social distancing. DAI is
15 looking into options to reinstate the phones by setting up physical barriers around each
16 phone.

17 Lastly, CDCR made the following video in which inmates serving on the Inmate
18 Advisory Councils at several CDCR prisons share their reasons for wearing cloth facial
19 barrier masks: [https://www.cdcr.ca.gov/insidecdcr/2020/06/08/in-this-together-insights-
20 best-practices-for-wearing-masks/](https://www.cdcr.ca.gov/insidecdcr/2020/06/08/in-this-together-insights-best-practices-for-wearing-masks/). This video is being played on the DRP-TV station at
21 all institutions with access by all inmates.

22 **VIII. Site Visits and Document Production**

23 **a. Plaintiffs' Site Visits**

24 On June 24, CDCR facilitated a virtual tour of the Substance Abuse Treatment
25 Facility. On June 25, CDCR facilitated a virtual tour of the California State Prison,
26 Solano. CDCR is in the process of coordinating a virtual tour at the California Men's
27 Colony for July 7.

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1 **b. Information CDCR Has Produced to Plaintiffs Since June 19**

2 On June 19, CDCR provided answers to Plaintiffs' questions about COVID-19
3 measures taken at the California Institution for Women. On June 22, CDCR produced a
4 copy of CDCR's memorandum titled COVID-19 Mandatory 14-Day Modified Program (2)
5 (dated June 19, 2020). On June 24, CDCR provided a description of the status of changes
6 that were made to the dorms in Facilities A and B at the California Institution for Men
7 since the virtual tour on May 22. The same day, CDCR provided an analysis of CDCR's
8 cell capacity prepared by CDCR's Division of Adult Institutions in consultation with
9 CCHCS, plus a report that set forth the number of empty cell beds at the respective
10 institutions and the number of medically high-risk incarcerated patients at each listed
11 institution. On June 27, CDCR provided answers to Plaintiff's questions about CDCR's
12 staff testing plan. On June 30, CDCR produced diagrams of San Quentin's Facility H-
13 dorms to Plaintiffs. Lastly, since the last case management conference, CDCR produced
14 approximately 385 PDFs containing copies of the weekly captain's checklists that all
15 CDCR institutions need to prepare in response CDCR's May 27, which requires that
16 captains and area managers complete checklists on a weekly basis confirming that the
17 areas they manage are compliant with previous directives concerning cloth face masks,
18 social distancing, cleaning schedules, display of COVID-19 posters, and availability of
19 hand sanitizer and disinfectants.

20
21
22 DATED: July 1, 2020

PRISON LAW OFFICE

23
24 By: _____/s/

25 SOPHIE HART

26 Attorney for Plaintiffs

