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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: June 9, 2020

Time: 10:00 a.m.

Crtrm.: 6, 2nd Floor

Judge: Hon. Jon S. Tigar

1 The parties submit the following joint statement in advance of the June 9, 2020
2 Case Management Conference (CMC).

3 Since the last CMC, the parties have met and conferred regarding certain aspects of
4 Defendants' response to the current health crisis. On Monday, June 1, Plaintiffs sent
5 Defendants an email, with a copy to the Receiver, requesting "a meet and confer this week
6 on the following topics with the people identified below and anyone else whom you or [the
7 Receiver] believe would be helpful to our discussions." 1) Testing CDCR and CCHCS
8 staff for COVID-19; 2) Moving high risk patients from cells to dorms; and 3) "Steps
9 necessary to improve the safety of people living in cells and dorms, especially high risk
10 people living in congregate living areas." The email did not contain any specific proposals
11 with respect to the topics listed therein.

12 On Wednesday, June 3, at 3:16 p.m., Plaintiffs emailed Defendants, again copying
13 the Receiver. In that email Plaintiffs wrote that "[i]n order to make the Meet and Confer
14 scheduled for Friday as productive as possible in the attached document we have set forth
15 our proposals on the three subjects we outlined below [in the June 1, email]." Plaintiffs
16 attached a two paged single-spaced document entitled "Plaintiffs Proposals For June 5,
17 2020 Meet and Confer." That document set forth Plaintiffs positions and demands on
18 "testing staff" and "steps necessary to improve the safety of people living in cells and
19 dorms, and especially high risk people living in congregate living areas."

20 On Friday, June 5, the parties had a conference call that lasted more than one and a
21 half hours. Approximately 20 people participated in the conference call, including the
22 Receiver and members of his staff, CDCR Division of Adult Institutions staff, CDCR
23 Employee Health and Wellness staff and lawyers from the Prison Law Office, the Attorney
24 General's office, Hanson Bridgett, and CDCR's Office of Legal Affairs to discuss the
25 proposals. With the exception of what is described below, no agreements were reached.
26 This was due in part to the short time frame that Defendants had to respond to the
27 document, the number of people on the call and because the Defendants are evaluating
28

1 many items that require thoughtful and coordinated action and approval and input from
 2 many stakeholders. Plaintiffs also contend that additional agreements were not reached
 3 because neither the Receiver nor anyone representing Defendants was prepared to make
 4 any decisions regarding Plaintiffs' proposals.¹

5 **I. TESTING STAFF FOR COVID-19**

6 The Receiver has identified prison staff as the main vector for spreading COVID-19
 7 in the state prisons and has recommended that all staff at all institutions be tested for
 8 COVID-19. Plaintiffs proposed that Defendants implement a testing program that includes
 9 the following three elements:

- 10 • universal baseline testing of all staff as soon as possible;
- 11 • regular surveillance testing thereafter; and
- 12 • testing of relevant staff for contact tracing investigations, whenever there is a
 13 new confirmed COVID-19 case (incarcerated person or staff) at the prison.

14 Defendants agree that staff testing is critical, and are developing a staff-testing plan
 15 with assistance and guidance from the California Department of Public Health. The details
 16 of that plan are still being worked out. When it is complete, the staff-testing plan will need
 17 to be reviewed by stakeholders, including the California Department of Public Health, the
 18 California Department of Health and Human Services, and the Governor's Office.

19 Defendants do not yet know when the staff-testing plan will be finalized. Katherine
 20 Minnich, Deputy Director of Human Resources, the office that oversees CDCR's Office of

21 _____

22 ¹ The parties did not meet and confer about further population reduction measures.
 23 This Court has now three times urged Defendants to resume releasing people who are
 24 within 60 days of released dates, noting that the Defendants' initial early release program
 25 was "a factor in the determination by the court that the state was not deliberately
 26 indifferent." RT, 5/14/20 at 6-7. The following week, the Court pointed out that "the state
 27 of the record right now is that early inmate release . . . which the state earlier determined
 28 was appropriate from a public safety standpoint, which we know is feasible because it
 happened, doesn't require us to take money from any other programs. In fact, it saves
 money." RT 5/21/20 at 36. At the last CMC, this Court again urged the Secretary and the
 Governor to continue the early release program. Defendants to date have not reconsidered
 their position.

1 Employee Health and Wellness, stated the draft protocol for testing sets different testing
2 standards for:

- 3 • Prisons without a recent COVID-19 case;
- 4 • Prisons with recent COVID-19 cases; and
- 5 • Prisons that provide skilled nursing facility (SNF) level of care (California
6 Health Care Facility, California Medical Facility and Central California
7 Women's Facility).

8 Plaintiffs agree that the staff-testing plan should include a baseline test of all employees
9 working in the SNF-type facilities (California Health Care Facility, Central California
10 Women's Facility, and California Medical Facility), with serial retesting of employees
11 who test negative. For the non-SNF prisons with no recent cases, Defendants do not
12 intend to do baseline testing of all staff, but rather intend to do surveillance testing of ten
13 percent of the staff, every fourteen days. For the non-SNF prisons with recent cases,
14 Defendants also do not intend to do baseline testing of all staff, but will test every fourteen
15 days all staff that worked in an area with close contact to the staff or incarcerated person
16 who tested positive. Defendants stressed, however, that these intentions have not been
17 finalized and are not yet being implemented.

18 With regard to the current outbreaks, CDCR has already tested about 1,164 staff at Avenal
19 State Prison and about 1,100 staff at California Institution for Men. Additionally, in May,
20 CDCR tested 438 staff at the California Men's Colony and 146 staff at the California
21 Institution for Women. CDCR has recommended to staff at Corcoran who may have been
22 exposed that they obtain testing in the community but CDCR has not yet conducted staff
23 testing at Corcoran.

24 **Plaintiffs' Position:**

25 A comprehensive, strategic plan to test staff is critical to reduce the risk of the
26 spread of the virus. Plaintiffs support Defendants' decision to develop a more
27 comprehensive plan for testing employees. However, we have serious concerns with the
28

1 draft plan as presented at the June 5 meet and confer. Defendants' current plan calls for
2 baseline testing of all staff (followed by periodic re-testing) only at CMF, CHCF, and
3 CCWF. Consistent with the Receiver's recommendation, Plaintiffs believe Defendants
4 should conduct universal baseline testing of all staff at all prisons.

5 Plaintiffs also believe Defendants should conduct more robust surveillance testing
6 of staff once baseline testing is completed, similar to that recommended for nursing homes.
7 Defendants are currently considering testing just 10% of staff every 14 days.² For skilled
8 nursing facilities without any positive COVID-19 cases, the California Department of
9 Public Health has recommended "testing of 25 percent of all [staff] every 7 days including
10 staff from multiple shifts and facility locations" such that "100 percent of facility staff are
11 tested each month." *See* Memorandum from Deputy Director Heidi Steinecker to Skilled
12 Nursing Facilities (May 22, 2020), available at:

13 <https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-20-53.aspx>. This
14 recommendation was made in recognition of the medical vulnerability of the residents, and
15 the inherent risks of congregate living. As Dr. Scott Allen, former State Medical Program
16 Director for the Rhode Island Department of Corrections and current subject matter expert
17 for the Department of Homeland Security, recently explained in his testimony to the
18 Senate Committee on the Judiciary, "there is no reason there should be a lesser standard
19 for correctional and detention facilities." *Examining Best Practices for Incarceration and*
20 *Detention During COVID-19 before the United States Senate Committee on the Judiciary*,
21 116th Cong. (June 2, 2020) (Written Statement of Dr. Scott A. Allen, M.D.), available at:
22 <https://www.judiciary.senate.gov/imo/media/doc/Scott%20Allen%20Testimony.pdf>.

23 Each prison's plan for surveillance testing should also be regularly adjusted based
24 on conditions in the community. The plan should call for prisons to conduct more frequent
25 staff testing if there is a significant outbreak in the community. *See* CDC, *Testing*

26 _____
27
28 ² When Plaintiffs asked at the meet and confer how 10% was selected for surveillance,
counsel for Defendants would not allow any response.

1 *Guidance for Nursing Homes*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/nursing->
2 [homes-testing.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/nursing-homes-testing.html) (updated May 19, 2020) (“State and local officials may adjust the
3 requirement for weekly testing of HCP based on the prevalence of the virus in their
4 community”).

5 Plaintiffs made a number of these recommendations to Defendants during the June
6 5th call, emphasizing the need for universal baseline testing, as well as more robust staff
7 surveillance testing. Plaintiffs recognize Defendants’ plan is not yet finalized, and have
8 requested that they share a draft of their plan before it is finalized to avoid further delay
9 and consequent harm. Defendants did not respond to that request.

10 **Defendants’ Position:**

11 From Defendants’ perspective, there is significant agreement between the parties
12 regarding staff testing in that CDCR fully agrees that it is critically important to develop
13 and implement a comprehensive staff-testing plan that involves testing staff at all of
14 CDCR’s institutions. In fact, CDCR began working closely with the California
15 Department of Public Health in May to develop such a plan. In the meantime, CDCR has
16 cooperated with local health departments on staff-testing-related issues and requests, and
17 as discussed above, a substantial amount of staff testing has already been completed.
18 CDCR has also been consulting with, and seeking the cooperation of, the California
19 Correctional Peace Officers Association concerning efforts to ramp up staff testing. And
20 as CDCR continues to develop its staff testing plan, it is also working toward securing
21 testing resources and making arrangements with labs for a smooth transition to the new
22 plan.

23 During the meeting to discuss staff testing, Plaintiffs’ counsel had several
24 comments and proposals in light of the information Defendants shared about CDCR’s draft
25 plan, and CDCR’s representative advised that those ideas and concerns would be
26 considered as the plan is further developed. The completion and final approval of CDCR’s
27 staff-testing plan is forthcoming, and CDCR will produce the staff-testing plan to
28

1 Plaintiffs' counsel when it is finished. CDCR will consider any additional concerns or
2 proposals from Plaintiffs' counsel after the completed plan is circulated. As with all of the
3 measures CDCR has taken in response to the pandemic, if changes to the plan are
4 warranted, adjustments will be made.

5 Regarding Plaintiffs' reference to the statement of Dr. Scott Allen, Defendants do
6 not believe the final staff-testing plan will be inconsistent with his position that all staff
7 should be tested in locations with COVID-19. *Examining Best Practices for Incarceration*
8 *and Detention During COVID-19 before the United States Senate Committee on the*
9 *Judiciary*, 116th Cong. (June 2, 2020) (Written Statement of Dr. Scott A. Allen, M.D., at
10 p. 6), available at:

11 <https://www.judiciary.senate.gov/imo/media/doc/Scott%20Allen%20Testimony.pdf>. This,
12 of course, can be further assessed and discussed with Plaintiffs' counsel when the
13 completed staff-testing plan is circulated.

14 **II. SAFELY HOUSING MEDICALLY VULNERABLE PEOPLE**

15 Plaintiffs proposed Defendants work with the Receiver to identify the vulnerable
16 people who are most at risk of harm from contracting COVID-19. For each person,
17 Plaintiffs recommended Defendants and the Receiver determine whether they are safely
18 housed. Plaintiffs asked that those who have tested negative, are at highest risk (due to age
19 and/or multiple risk factors or poorly controlled chronic conditions that constitute risk
20 factors) and are currently living in dormitories, gyms or day rooms, be transferred to single
21 cells or cells with other people who have tested negative. Finally, Plaintiffs asked that
22 those people who have medical risk factors that are less serious should be considered for
23 cell housing or housing in smaller dorms where they are able to distance and may be
24 monitored.

25 Regarding medically vulnerable patients, the Receiver indicated that he and his staff
26 have made this issue a top priority and were expending significant resources to determine
27 how best to safely house them. No decision had yet been reached on Plaintiffs' proposals,
28

1 nor could the Receiver say when a decision would be reached.

2 **Plaintiffs' Position:**

3 It is the opinion of Dr. Arthur Reingold that cells are safer for the medically
4 vulnerable patients than dormitories, and that those medically vulnerable people who have
5 tested negative should be moved out of prisons where there are outbreaks.

6 This issue has been pending for three months, yet despite Dr. Reingold's
7 uncontradicted expert opinion, thousands of high-risk patients remain in dormitories
8 throughout the state. During the meet and confer session, the Receiver announced that this
9 issue was a top priority and he was now considering the appropriateness of moves from
10 dorms to cells. Plaintiffs urge the Receiver and Defendants to take action to safely rehouse
11 these people as soon as possible.³

12 In addition to Dr. Reingold's opinion, dorms are plainly the locus of the largest,
13 most widespread, and serious outbreaks. In one Avenal dorm, more than 90% of patients
14 tested positive. At Chuckawalla Valley, which houses nearly 3,000 people, all in dorms,
15 hundreds had been tested and CCHCS last week said the positive rate was approximately
16 75%. By contrast, the outbreaks in celled housing at Lancaster and CMC, while
17 concerning, were stopped before they extended nearly as widely and appear to be
18 contained. Lancaster has had 128 cases, but only one is currently active; CMC has had 11
19 cases, but only one is currently active. With regard to morbidity and mortality, almost all
20 of the approximately 50 people currently hospitalized statewide due to COVID-19 were
21 infected while living in dorms, and the same is true of the dozen patients who have died
22 thus far. Dorms present an unacceptable risk of infection and harm under current
23 conditions.

24 _____
25 ³ In order to more precisely ascertain the extent of the risk, Plaintiffs have asked for and
26 the Receiver's office stated that it will provide a list of all people incarcerated in CDCR
27 who have one or more risk factors for complications from COVID-19, along with the
28 number of such factors for each person, and whether the person is housed in a cell or a
dorm.

1 CCHCS had a plan to move almost 700 medically high risk patients who had tested
2 negative for the virus from California Institution for Men (CIM) to other prisons. Those
3 transfers began on or around May 29th. The patients who were transferred had tested
4 negative, but in many cases the tests were done *two to three weeks before the transfer*. Not
5 surprisingly, some of those people tested positive shortly after their arrival at the new
6 prisons. As a result, the process was suspended after the first 125 transfers⁴. CCHCS is
7 now reconsidering its testing strategy for transfers, including of the medically vulnerable.⁵
8 Plaintiffs have requested to review the proposed revised testing protocols before they are
9 finalized.

10 At the meet and confer, the Receiver raised concerns that some people who are high
11 risk may prefer not to transfer from a dorm to a cell, and asked Plaintiffs what such
12 patients should be told, and what should be done. Plaintiffs now propose the following
13 approach: a high risk patient living in a congregate area who has recently tested negative
14 may refuse a transfer to a celled housing unit, unless the Receiver or his medical staff
15 determines that the patient's continued presence in that congregate living area would be a
16 public health threat. Before the patient is asked to make a decision, the patient must
17 receive meaningful education from a Primary Care Provider on the medical risks of staying
18 in his/her present congregate living space and potential medical benefits of being
19 transferred to another location, and an opportunity to have any questions answered.

21
22 ⁴ On May 22, a week before the first transfer, Plaintiffs asked the Receiver's office to
23 consider whether certain practices regarding the housing of CIM patients who had tested
24 positive with those who tested negative created a risk of infection for the latter group and
for others if any members of that group became infected and were then transferred.

25 ⁵ On June 2nd, after the date of many of 125 transfers from CIM, CCHCS published clinical
26 guidelines stating that those who transfer "may be tested within a week prior to transfer or
27 upon arrival." *COVID-19: Interim Guidance for Health Care and Public Health*
28 *Providers*, at <https://cchcs.ca.gov/covid-19-interim-guidance/>. Plaintiffs do not know why
this standard was not applied to the CIM patients discussed above, although we note that as
posted it is discretionary not mandatory.

1 **Defendants' Position:**

2 As reported last week, on May 26, the Receiver notified CDCR that 691 high-risk
3 inmates at Correctional Institution for Men (CIM) tested negative for COVID-19 and
4 should be transferred out of CIM. CDCR immediately began the process of evaluating this
5 group of inmates to determine whether they should be excluded from transfers based on
6 factors such as display of COVID-19 related symptoms, their overall medical or mental
7 health condition, pending appointments, or upcoming release within the next ten days.
8 Between May 28 and May 30, 194 inmates on the Receiver's list were moved out of CIM
9 to Corcoran and San Quentin. All inmates tested negative for COVID-19 before their
10 transfers out of CIM. Transfers of approximately 125 more inmates out of CIM were
11 planned for June 4 and 5. But the Receiver ordered the suspension of all transfers from
12 CIM on June 4 after it was discovered that some of the inmates who transferred out of
13 CIM tested positive when they arrived at their destinations. To date, sixteen of the
14 transferred inmates have tested positive. Unfortunately, San Quentin, which was
15 previously a COVID-free prison, now has COVID-positive inmates. San Quentin is taking
16 a number of measures to prevent spread of COVID-19 from these inmates, including
17 placing all inmates transferred from CIM in quarantine or isolation, and strictly limiting
18 their movement and exposure to other inmates and staff.

19 CDCR is prepared to work with the Receiver once he has determined an approach
20 for housing medically high-risk patients.

21 **III. ESTABLISHING AND ENFORCING WORKABLE DISTANCING PROTOCOLS AT**
22 **CDCR'S INSTITUTIONS**

23 Plaintiffs' proposal to improve the safety of people living in cells and dorms included
24 two elements: (1) establish and enforce workable distancing protocols for all incarcerated
25 people; and (2) create livable dorms and gyms.

26 Specifically, Plaintiffs recommended people be assigned to cohorts for yard, chow
27 hall, showers, and dayroom, and staff be assigned to working with a particular cohort to
28

1 minimize interactions between incarcerated people and different staff members. Plaintiffs
2 further recommended that incarcerated people be assigned to work as porters in the
3 housing unit where they live. Plaintiffs recommended the following strategies to strike a
4 balance between ensuring physical distancing and protecting people's ability to engage,
5 interact, and avert the physical and mental distress that accompanies social deprivation: (1)
6 reduce population density to create significantly more distance between cohorts and
7 significant fewer cohorts in each congregate living space, to maximize the amount of time
8 people can be assigned to use common spaces; (2) create an incentive system to encourage
9 remaining in cohorts; (3) test dorm residents more frequently; and (4) install clear shields
10 strategically in the dorms.

11 The parties discussed Plaintiffs' proposals. Defendants said that they would
12 consider the second and fourth proposals (creating an incentive system and installing
13 shields), but no agreement was reached.

14 Plaintiffs also requested that the Division of Adult Institutions consider whether the
15 ventilation systems at each of the prisons is using the filters required by current COVID
16 community standards. Ms. Gipson stated that she would refer that question to the Plant
17 Operations.

18 **Plaintiffs' Position:**

19 The primary barrier to establishing, encouraging, or enforcing workable protocols
20 for distancing in the dorms is that most CDCR dorms are too crowded to permit people to
21 stay six feet from people in other cohorts. The reduction of population density in the
22 dormitories so that there are fewer cohorts sharing congregate living space is a critical
23 strategy for mitigating the spread of the COVID-19 virus. The Receiver has affirmed that
24 CDCR'S decision to release approximately 3,500 people early had a measureable positive
25 impact on the State's ability to avoid illness and death related to COVID-19. RT 5/21/20 at
26 34. Plaintiffs strongly agree that reducing the prison population will aid in slowing the
27 spread of the virus, including by reducing the demand on dormitory beds. Population
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1 density can be reduced by, as discussed below, re-closing the CDCR to intake, so that the
2 population is reduced by attrition. Additionally, as this Court has stated repeatedly,
3 Defendants have demonstrated that people can be safely released ahead of schedule,
4 reducing the prison population by thousands. Plaintiffs strongly urge the Defendants to
5 close intake and to renew their successful early release program.

6 Defendants describe below corrective actions recently taken, and newly instituted
7 self-monitoring weekly checklists that a captain or manager is required to complete at each
8 prison regarding COVID-19 risk reduction measures. Those correction actions are not yet
9 complete, and we have not yet verified what is said to have been done. Also, while self-
10 monitoring is necessary and welcome, it is too soon to know whether it works to identify
11 all substantial problems or result in long term improvements.

12 **Defendants' Position:**

13 Defendants disagree with Plaintiffs' assertion that dorms across the prison system
14 are too crowded to allow for six-foot distancing between cohorts. In the two prisons where
15 it has been discovered that there was insufficient space between certain cohorts in
16 particular dorms, CDCR has either already corrected, or is in the process of correcting,
17 those identified issues by, for example, rearranging the cohorts or extending the height of
18 barrier walls between cohorts.

19 Defendants were pleased that Plaintiffs' counsel acknowledged that there must be a
20 balance between maintaining an appropriate level of physical distancing while still
21 allowing inmates to engage and interact with other inmates and move around the facilities
22 to the extent their security levels permit them to. Many inmates have worked hard to
23 lower their classification scores so that they can enjoy the benefits of living in less
24 restrictive dorm environments. Unfortunately, many of those benefits have been curtailed
25 in response to the pandemic. Despite that fact, many dorm inmates currently have a
26 cooperative and helpful attitude toward the implementation of measures to prevent the
27 spread of COVID-19. Defendants are concerned, however, that overly strict enforcement
28

1 of those measures, in particular through discipline or threats of discipline, could disrupt the
2 delicate balance that has been achieved, and cause a backlash.

3 CDCR has implemented new measures to ensure accountability and compliance
4 with physical distancing rules and enhanced cleaning measures:

5 **1. May 27 memorandum from the Division of Adult Institutions**

6 On May 27, CDCR issued a memorandum titled COVID-19 Operational Guidelines
7 Monitoring and Accountability to the institutions. This new memorandum requires that
8 captains and area managers complete checklists on a weekly basis confirming that the
9 areas they manage are compliant with previous directives concerning cloth face masks,
10 social distancing, cleaning schedules, display of COVID-19 posters, and availability of
11 hand sanitizer and disinfectants. The completed checklists are to be submitted to CDCR
12 headquarters on a weekly basis. The new memorandum also requires that the cleaning of
13 bathrooms and showers be recorded on cleaning logs, and that inmate porters wear gloves
14 and masks when they clean.

15 The initial batch of checklists that were submitted have been produced to Plaintiffs'
16 counsel, but not all prisons have yet submitted their checklists. The submitted checklists
17 were effective at identifying issues at the prisons that need to be addressed. For example,
18 at California Correctional Center, the checklists revealed that some areas are out of hand
19 sanitizer; at California Correctional Institution, the checklists revealed that in some areas
20 staff and inmates need additional education and instruction about wearing cloth face
21 masks; at Deuel Vocational Institution, the checklists revealed that cleaning logs are
22 needed in certain areas; and at other prisons, the checklists helped identify areas where
23 inmates need more instruction and education on social distancing. The checklists indicate
24 that immediate actions were taken to correct a number of these identified issues, and other
25 issues can be addressed by the institutions now that they have been identified.

26 **2. Improvements were made at CIM after the May 22 virtual tour.**

27 As Defendants reported last week, CDCR facilitated a virtual tour for Plaintiffs at
28

1 CIM's Facility A and Facility D dorms on May 22. Plaintiffs identified several areas of
2 concern with respect to the set-up of cohorts at CIM's dorms, including concerns that there
3 were less than six feet separation between some cohorts in Facility D.

4 Since the tour, CIM began implementing changes to the Facility A dorms to
5 establish six feet of separation between cohorts or to extend barrier walls to separate
6 cohorts. For example, for the Facility A dorms, CIM ordered Lexan (solid clear plastic)
7 barriers to extend the height of the pony walls between cohorts. As of June 4, two of the
8 eight barriers were delivered to CIM, and one of the barriers was installed. It took two
9 days to complete. As of June 8, the second barrier has been installed. The remaining six
10 barriers are expected to be delivered by June 22. In the meantime, CIM is extending the
11 walls in the remaining Facility A Dorms with plastic sheeting. As of June 8, the plastic
12 sheeting has been installed to extend the walls in four of the Facility A Dorms and CIM is
13 working on installing the plastic sheeting in the remaining two Facility A Dorms.

14 In addition, the transfer of inmates out of Facility A is helping to facilitate the
15 reassignment of bunks in a way that establishes six feet of separation in all directions.
16 Although Defendants believe that six feet of separation already existed in the Facility D
17 Dorms, CIM reconfigured some of the bunks or bunk assignments to create a different
18 layout of cohorts. In addition, tape either has been or will be placed on the ground in
19 Facility A and D to identify the perimeter of each cohort. Further, inmates received
20 additional instructions to sleep in alternating head-to-toe arrangements to maximize the
21 distance between inmates' heads. Lastly, CIM is in the process of placing six-foot markers
22 on benches and chairs in the day rooms, and inmates were informed that they can only sit
23 on the marked spaces. As of last week, CIM was waiting for the supply of additional tape
24 to complete these changes.

25 CDCR will facilitate a re-inspection of CIM's Facility A and D dorms for Plaintiffs
26 once the majority of the changes have been completed, which is currently anticipated this
27 week.

28

1 **3. Improvements were made at the California Medical Facility**
2 **after the May 29 tour.**

3 On May 29, CDCR permitted Plaintiffs' counsel to tour the California Medical
4 Facility (CMF) in person. The tour revealed several issues at CMF that required corrective
5 action.

6 In two large dorms at CMF, some inmate cohorts were only separated by a short
7 wall. While the wall would seem to offer some protection to inmates while they are
8 sleeping with their heads below the top of the wall, the heads of inmates sitting up on their
9 bunks on either side of the wall could be well within six feet of each other with no barrier
10 in between them. This is the same issue that was identified in some dorms at CIM. CDCR
11 is investigating whether this situation exists in dorms at other institutions.

12 CMF immediately began to work on remedying this situation and has now erected a
13 Visqueen (plastic sheeting) barrier that extends the height of the wall to just over six feet.
14 CMF is now working to acquire sheets of Lexan that it plans to install in place of the
15 Visqueen barrier.

16 CMF has previously taken a number of steps to inform inmates about keeping
17 appropriate physical distance, including posting notices, broadcasting videos
18 announcements concerning COVID-19 and the importance of social distancing, and
19 educating staff and inmates about measures to prevent the spread of COVID-19. But,
20 during the tour, a number of inmates advised that they did not understand certain aspects of
21 the cohort plan. For example, some inmates said they did not understand that they should
22 attempt to engage in some program activities, such as dayroom and recreation yard, with
23 members of their cohort. Accordingly, since the CMF tour, CMF officials have continued
24 to make efforts to educate inmates about measures to prevent the spread of COVID-19 and
25 the importance of keeping appropriate physical distance. Specifically, the CMF
26 management team conducted tours of each of their respective areas of the institution,
27 further educating inmates regarding the expectations of social distancing, and further
28 explaining the importance of the eight-person cohorts. They also explained that inmates

1 should program within their cohorts when possible, and otherwise keep at least six feet
2 away from other inmates. And they reiterated the importance of wearing masks and of
3 frequent cleaning and disinfecting.

4 **IV. INTAKE**

5 While the subject was not identified in either Plaintiffs' June 1 or June 3 emails
6 concerning the parties' meet and confer, during the meet-and-confer, Plaintiffs added an
7 additional element to the proposal: that Defendants close all intake from county jails,
8 including all movement of people from Reception Centers to accommodate that intake.

9 As reported the last two weeks, in May, CDCR decided to maintain the closure of
10 intake for an additional 30 days to June 22, with the exception of the intake of
11 approximately 200 county jail inmates from four counties (Los Angeles, San Bernardino,
12 Fresno, and San Diego). Approximately 50 inmates have been transferred from these
13 county jails to CDCR prisons since May 20. They are currently housed at North Kern State
14 Prison and Wasco State Prison. Due to the high number of positive COVID-19 cases in
15 Los Angeles County jails, CDCR suspended the intake of inmates from Los Angeles
16 County jails on June 5 until further notice. CDCR will continue monitoring the number of
17 positive COVID-19 cases in the San Bernardino County, Fresno County, and San Diego
18 jails. Intake from all county jails is currently scheduled to resume on June 22; however,
19 CDCR is continuing to evaluate when and how to resume intake.

20 Plaintiffs proposed that intake be closed until two conditions are met: first,
21 Defendants identify the most medically vulnerable people housed in congregate living
22 units who can be safely transferred, offer them celled housing, and safely transfer those
23 who choose to move. Second, Defendants reassess movement protocols in light of the
24 problems already identified, such as patients at CIM who had tested negative being
25 transferred to San Quentin several weeks later and testing positive on arrival.

26 Defendants did not have an immediate response. Director Connie Gipson stated
27 that CDCR plans to open intake on June 22. She indicated that there will be limits on the
28

1 number of people accepted but those limits have not yet been determined. She also stated
2 that people would not be accepted from Los Angeles County, because at least five people
3 from that county tested positive upon arrival at CDCR in the last week. She indicated that
4 CDCR was considering limiting intake from other counties with significant outbreaks in
5 their jails, but that the procedures for re-opening to intake are not yet established.
6 Plaintiffs agree that counties with a current outbreak should not be eligible to send people
7 to CDCR.

8 **Plaintiffs' Position:**

9 Plaintiffs believe that intake should be suspended because we agree with the
10 Receiver that movement entails a significant risk for spreading the virus, and given the
11 current state of multiple uncontrolled outbreaks, movement should cease unless it is done
12 in a carefully thought-out way for the purpose of increasing patient safety. Movement of
13 medically vulnerable people to safer housing would be appropriate, if done pursuant to
14 meticulously considered written protocols to minimize the risk to patients, staff, and
15 others. Bringing new people into the system, however, would serve only to increase the
16 risk of greater infection and faster spread in more crowded facilities.

17 **Defendants' Position:**

18 CDCR is in the process of evaluating whether the current intake restrictions should
19 be extended and other restrictions on intake should be put in place after June 22. CDCR
20 will continue reporting to this Court and Plaintiffs about its intake plans.

21 **V. INSTITUTION INSPECTIONS**

22 **A. Plaintiffs' Touring**

23 As mentioned above, on May 28, CDCR facilitated an in-person tour of CMF for
24 Plaintiffs and will facilitate a virtual tour California Health Care Facility on Wednesday,
25 June 10. Further, CDCR is in the process of coordinating a re-inspection of CIM for
26 Plaintiffs. On June 4, Plaintiffs requested that CDCR schedule additional virtual tours at
27 California Men's Colony, Substance Abuse Treatment Facility, and California State Prison
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1 – Solano, and an in-person re-inspection of CMF.

2 **B. Additional Touring by CDCR and CCHCS**

3 **Defendants' Position:**

4 As reported last week, CDCR's Associate Director of Reception Centers traveled to
5 CIM on Tuesday, May 26, to inspect the reconfigurations and work with CIM to come up
6 with options to extend the barrier between inmates on either side of pony walls. CDCR
7 will continue these types of visits in the future and will keep the Court and Plaintiffs
8 apprised of the efforts. In addition, the parties were informed that California Correctional
9 Health Care Services commenced its tours of Pleasant Valley State Prison, R.J. Donovan,
10 and San Quentin on June 1, and that it will tour all of CDCR's other institutions in the
11 coming weeks.

12 **VI. INFORMATION THAT CDCR HAS PRODUCED TO PLAINTIFFS SINCE MAY 28,**
13 **2020**

14 As mentioned above, CDCR facilitated tours of CMF on May 29 and a California
15 Health Care Facility virtual tour was offered on June 10. Further, on June 5, CDCR
16 produced checklists from the captain's tours from eleven facilities. Further checklists will
17 be produced on June 8. In addition, on June 1 and 2, CDCR responded to Plaintiffs'
18 questions about the status of the installation of Lexan barrier walls at CIM. On June 3,
19 CDCR answered various follow-up questions regarding Plaintiffs' tour at CMF. On June
20 4, CDCR responded to various COVID-19 related questions pertaining to cohorting, mask
21 wearing, and cleaning protocols at California Health Care Facility, and produced
22 documents in response thereto and a separate request for documents and information
23 related to legionella at California Health Care Facility. On June 5, CDCR shared
24 information about staff testing and other topics with Plaintiffs' counsel during the meet-
25 and-confer session. Lastly, on June 6, CDCR answered various COVID-19 related
26 questions pertaining inmate housing and meals at Chuckawalla Valley State Prison.
27 CDCR also scheduled confidential calls for Plaintiffs to speak with their clients at
28

1 California Institution for Women and California Health Care Facility.

2 **VII. OTHER UPDATES**

3 **Defendants' Position:**

4 During Nurses Week in mid-May, CDCR and CCHCS honored and celebrated their
5 hard working nurses by providing food and giving out COVID-19 prizes (such as toilet
6 paper, disinfectant and paper towels) as well as gift cards while complying with social
7 distancing practices. Photos and more details can be found at
8 [https://www.cdcr.ca.gov/insidecdcr/2020/06/02/across-california-cdcr-cchcs-honor-](https://www.cdcr.ca.gov/insidecdcr/2020/06/02/across-california-cdcr-cchcs-honor-nurses/)
9 [nurses/](https://www.cdcr.ca.gov/insidecdcr/2020/06/02/across-california-cdcr-cchcs-honor-nurses/).

10 On June 5, Wardens and Chief Executives Officers from across the State participated
11 in a discussion titled “Lessons Learned the First 90 days” where leadership who have
12 experienced COVID outbreaks at California Institution for Women, California Men’s
13 Colony, and California Institution for Men candidly shared advice and strategies that
14 greatly assisted their staff during these recent outbreaks.

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DATED: June 8, 2020

PRISON LAW OFFICE

By: /s/ Alison Hardy

ALISON HARDY

Attorney for Plaintiffs

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DATED: June 8, 2020

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CERTIFICATE OF SERVICE

Case Name: Plata, et al. v. Newsom, et al. No. 01-cv-01351-JST

I hereby certify that on June 8, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 8, 2020, at San Francisco, California.

N. Codling
Declarant

/s/ N. Codling
Signature