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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **OAKLAND DIVISION**

12 MARCIANO PLATA, et al.,

Plaintiffs,

13 v.

14 GAVIN NEWSOM., et al.,

Defendants.

Case No. 4:01-cv-1351 JST

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' APPLICATION FOR
AN EXTENSION OF TIME TO
COMPLY WITH DEADLINE TO
PREPARE ISOLATION AND
QUARANTINE SPACE
FOR OCCUPANCY**

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18 Plaintiffs oppose Defendants' request for additional time to comply, at thirteen of
19 the 35 prisons, with this Court's July 22, 2020 Order (ECF No. 3401) to set aside
20 quarantine and isolation space for use in the event of a COVID-19 outbreak.¹ We do so
21 because the risk of significant harm to Plaintiffs at those thirteen prisons is simply too
22 great to permit further compliance delays. Thousands of people became infected and
23

24 ¹ Specifically, Defendants seek an extension of the requirement at page 4, lines 14-15 of
the July 22 Order that required that by September 2 they set aside all bed space identified
in accord with the process set forth at page 4, lines 6-13 of that Order.

1 dozens of people died at prisons, including San Quentin, California Institution for Men,
2 and Avenal State Prison, where COVID-19 spread rapidly, in large part because those
3 prisons lacked adequate quarantining and isolation space. The need for available space to
4 adequately respond to outbreaks at every prison is critical, and it is urgent.

5 To address this issue, this Court ordered the parties to meet and confer with the
6 Receiver in early July regarding the need for sufficient space at each prison to permit the
7 isolation and quarantine of patients, consistent with public health guidance, in the event
8 of a COVID-19 outbreak. ECF 3381. The parties ultimately submitted different
9 proposed orders to identify and set aside space. The Experts for both parties concurred
10 that setting aside space for isolation and quarantine in the event of an outbreak is
11 necessary. *See* ECF No. 3391-1 ¶ 5 (Decl. of Adam Luring) [“Without adequate space to
12 accomplish . . . separation, minor outbreaks can quickly flare up to a disastrous level”]
13 and ECF No. 3398-1 ¶ 10 (Dec. of Anne Spaulding) [“it is important to have space
14 available for quarantine and isolation purposes in the event of an outbreak of COVID-19
15 in CDCR’s prisons”].

17 On July 22, finding that there was “no dispute” that each prison must allocate and
18 set aside isolation and quarantine space, and that there was “no reason to delay
19 implementation” of that plan, this Court ordered Defendants to identify at least 100 beds
20 at every prison by August 5, to assess whether additional beds were required to respond
21 to a COVID-19 outbreak by August 19, and, by September 2, to have those spaces ready
22 for occupancy. ECF No. 3401 at 4-5.

24 Defendants provided their assessment of additional beds for the 35 prisons to

1 Plaintiffs on August 27. *See* ECF 3439-2 (Exhibit A to Gipson Declaration). These are
2 the beds that Defendants were required to have vacated by September 2. However, on
3 September 1, Defendants asked Plaintiffs to stipulate to an order extending the
4 compliance date. Noting the substantial risk to Plaintiffs in the event of an outbreak at
5 any of the prisons, and the availability of additional options to Defendants, including the
6 option of releasing additional people from prison, Plaintiffs did not agree to the
7 extension.

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9 On September 2, Defendants asked this Court to extend the deadline for
10 compliance to September 25 for ten prisons, and to October 31 for three additional
11 prisons. Defendants asserted that, at those thirteen prisons, the spaces identified for
12 quarantine and isolation cannot be made ready for occupancy until CDCR transfers
13 people to other prisons. ECF No. 3439 at 2.

14 The only evidence offered to support their position is a declaration from Connie
15 Gipson, Director of CDCR’s Division of Adult Institutions, stating that “inmate transfers
16 will be required to open up some of the identified spaces needed” for quarantine and
17 isolation, and that the transfers would be done with the cooperation of the Receiver, in
18 compliance with the matrix. ECF No. 3439-2 at ¶ 2. According to Ms. Gipson, for three
19 of the prisons, California Medical Facility, California Institution for Men and California
20 State Prison—Los Angeles, the people who must be transferred will be difficult to place
21 at other prisons because of “their disability, medical, and mental health status.” *Id.* at ¶ 6.
22 Defendants claim that, pending the transfers, the thirteen prisons have “a substantial
23 amount” of quarantine and isolation space ready for occupancy. ECF 3439 at 2-3.
24

1 In fact, Defendants’ chart showing the quarantine and isolations space Defendants
2 have reserved, at least eight of the thirteen prisons have vacated only half or less than half
3 of the space Defendants deem necessary to respond to an outbreak.² ECF 3439 at 5-7.
4 Indeed, at one prison, Sierra Conservation Center, no space has yet been vacated, leaving
5 the prison with no available space for quarantine or isolation of patients who have, or
6 have been exposed to, COVID-19. *Id.* at 7. Defendants must expedite their efforts to
7 ensure that these spaces are promptly emptied and prepared for occupancy for the next
8 round of outbreaks.

9
10 Regarding the amount of time Defendants will require to empty the identified
11 spaces, Defendants have provided no information regarding the number of people who
12 they believe must be transferred out of each prison in order to vacate those buildings. A
13 request for an extension of this kind must, we submit, be supported by specific evidence,
14 not general assertions entirely devoid of factual foundation. *Cf. Walker v Sumner*, 917
15 F.2d 382, 386 (“Prison authorities cannot rely on general or conclusory assertions to
16 support their policies”).

17 Plaintiffs respectfully request that this Court deny Defendants’ application, and
18 order immediate compliance with the July 22 Order requiring that isolation and
19 quarantine space be available for occupancy at all 35 prisons.
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24 ² Avenal State Prison, Calipatria State Prison, Centinela State Prison, Chuckawalla Valley State Prison, High Desert
25 State Prison, Sierra Conservation Center, Wasco State Prison, and California Institution for Men.

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Respectfully submitted,

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