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

14 MARCIANO PLATA, et al.,
15 Plaintiffs,
16 v.
17 GAVIN NEWSOM, et al.,
18 Defendants.

CASE NO. 01-1351 JST

**DEFENDANTS' NOTICE OF MOTION
AND ADMINISTRATIVE MOTION
TO MODIFY BRIEFING SCHEDULE
ON PLAINTIFFS' MOTION RE:
QUARANTINE AND ISOLATION
SPACE; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

Judge: Hon. Jon S. Tigar

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21 TO PLAINTIFFS and THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that Defendants move under Northern District Local Rules 6-3
23 and 7-11 to modify the briefing schedule selected by Plaintiffs for their motion related to
24 quarantine and isolation space in Defendants' institutions throughout the state of California.
25 Plaintiffs selected December 23, 2020, as the hearing date, which was one of two options the
26 Court provided. The Court previously set December 9, 2020, as the deadline to file a brief for a
27 hearing on December 23.
28

1 Plaintiffs have insisted that there be a simultaneous exchange of briefs, rather than
2 providing Defendants a chance to review Plaintiffs' position and expert opinions before drafting
3 an opposition. As explained in detail in the supporting declaration of Ryan Gille, good cause
4 supports modifying the briefing schedule because Defendants cannot adequately prepare a
5 response to Plaintiffs' motion without having seen their points and authorities or their expert's
6 opinions. Defendants requests that this Court modify the briefing schedule by ordering Plaintiffs
7 to provide their points and authorities, and expert opinions, first in time and to afford Defendants
8 at least five days to respond before the December 9 filing deadline.

9 Alternatively, Defendants request that the Court simply adopt the December 31 filing
10 deadline and order Plaintiffs to provide their points and authorities and expert opinions by
11 December 19, 2020, Defendants' response due to Plaintiffs on December 28, 2020, and the final
12 joint statement be filed on December 31, 2020. This would allow the parties time to fully brief
13 and exchange their positions and to work together to identify the issues and areas in dispute,
14 including among their experts.

15 This motion is based on this notice of motion and motion, the declaration of counsel, and
16 the file.

17 INTRODUCTION

18 Plaintiffs have insisted that Defendants draft an opposition to a motion they have not
19 seen. This is not fair and ignores fundamental principles of due process. Defendants understand
20 the Court's preference for a joint brief on Plaintiffs' anticipated quarantine motion, and do not
21 object to submitting a joint brief. But Defendants must request relief from the briefing schedule
22 that Plaintiffs have demanded for their anticipated motion.

23 Plaintiffs have chosen to have their motion heard on December 23. Based on the filing
24 deadline the Court provided for that hearing date, the additional work the Court has requested the
25 parties complete before filing a joint brief, and the briefing schedule that Plaintiffs have
26 demanded for a December 9 filing, Defendants would not have a fair opportunity to oppose
27 Plaintiffs' motion. As it currently stands, Defendants do not know what specific arguments
28 Plaintiffs intend to present to the Court, the evidentiary support for those arguments – including

1 their expert's opinion, the legal support for their arguments, or the relief they intend to
2 request. Regardless, Plaintiffs have insisted that the parties simultaneously exchange their briefs
3 (and evidence) for this motion on December 4, and then work on answering the Court's questions
4 about the opinions of their experts before filing.

5 Defendants cannot draft an opposition to a motion they have never seen. While Defendants
6 are generally aware of Plaintiffs' position on this topic, Plaintiffs have not provided (nor do they
7 intend to provide in advance of a simultaneous exchange) the legal authorities upon which they
8 intend to rely or their expert's opinion. Further complicating Plaintiffs' demand for this exchange
9 to occur by December 4 and the joint filing on December 9 is the deadline for the Parties to
10 submit the next case management conference statement on the same date. The issues Plaintiffs
11 intend to raise in their motion concern important subjects and the relief they presumably intend to
12 request would impact the entire State prison system and could potentially have statewide
13 repercussions. Under these circumstances, due process requires that Defendants be provided a
14 fair opportunity to review Plaintiffs' motion (including time to discuss the specifics of Plaintiffs'
15 requested relief with Defendants' expert), and sufficient time to prepare an opposition.

16 **GOOD CAUSE SUPPORTS GRANTING DEFENDANTS' MOTION**

17 "Good cause" is a non-rigorous standard that has been construed broadly across procedural
18 and statutory contexts. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010).
19 With respect to scheduling orders, the "good cause" standard focuses on the diligence of the party
20 seeking to amend a schedule and the reasons for seeking modification. *Johnson v. Mammoth*
21 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

22 The fundamental requirement of due process is the opportunity to be heard at a meaningful
23 time and in a meaningful manner. *S.E.C. v. McCarthy*, 322 F.3d 650, 659 (9th Cir. 2003); citing
24 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation marks omitted). Due process
25 includes notice "reasonably calculated, under all the circumstances, to apprise interested parties"
26 of the proceeding, and an opportunity to be heard. *Mullane v. Cent. Hanover Bank & Trust Co.*,
27 339 U.S. 306, 314 (1950). Here, given the important nature of the issues Plaintiffs intend to raise,
28 significant process is due. At the very least, Defendants should have a week to review and

1 respond to Plaintiffs motion.

2 Plaintiffs waited four days after the Court issued its order—to November 24—to inform
3 Defendants that they decided to set the hearing for their motion on December 23, and to demand
4 that there be a simultaneous exchange of briefs on December 4. (Decl. Gille, Ex. A at 6.) At the
5 time Plaintiffs notified Defendants of their decision, there were 15 calendar days remaining
6 before the December 9 joint-brief deadline.

7 Plaintiffs make much of the fact that Defendants indicated at the last Case Management
8 Conference that they were amenable to a December 23 hearing, but that was before the parties
9 knew the Court would require a December 9 filing deadline for that hearing date or that Plaintiffs
10 would refuse to provide their legal authority and expert's opinion to Defendants in advance of
11 expecting their opposition. (Decl. Gille ¶ 4.) In agreeing to the December 23 hearing date,
12 Defendants assumed that the parties would work out a fair and orderly briefing schedule that
13 would permit Defendants a reasonable period to review and respond to Plaintiffs' motion. (Decl.
14 Gille ¶ 5.)

15 Plaintiffs contend that Defendants have no right to review Plaintiffs' arguments or expert
16 opinion(s) before being required to provide their opposition so that it can be combined with
17 Plaintiffs' motion in a joint brief. (Decl. Gille, Ex. A at 1, 3.) Plaintiffs assert that their argument
18 requires no prior review because it is "very straightforward [and] simple," yet Plaintiffs anticipate
19 that it will be a ten-page brief. (Decl. Gille, Ex. A at 1.)

20 Defendants have explained that they need adequate time to review Plaintiffs' legal
21 arguments, evidence, authorities, and expert opinion(s) so that they can provide a thorough
22 response supported by their own evidence and expert opinion that will facilitate the Court's
23 analysis of the issues. (Decl. Gille, Ex. A at 2, 5.) Plaintiffs have not provided any reason why
24 they cannot provide their legal arguments or expert opinion(s) before Defendants' opposition so
25 that Defendants are able to respond meaningfully in their section of the joint brief. (Decl. Gille,
26 Ex. A.) Defendants are not demanding the full 14 days to oppose Plaintiffs' motion, as is
27 generally afforded by the Northern District's Local Rules. *See* N.D. L.R. 7-3(a). Rather,
28 Defendants are merely requesting adequate time to gather evidence and prepare a well-reasoned

1 brief in response.

2 Defendants have been diligent in seeking this request as they immediately communicated
3 their concerns about the schedule that Plaintiffs demanded and, in good faith, proposed
4 alternatives, one of which was an alternative schedule that the Court itself proposed. (Decl. Gille,
5 Ex. A at 4, 5.) But Plaintiffs continue to insist on the unreasonable briefing schedule they
6 initially demanded.

7 Moreover, if the Court adopts Plaintiffs' position and allows them to withhold their legal
8 positions prior to an exchange of briefs, it would deny Defendants the opportunity to
9 meaningfully respond to the motion. *McCarthy*, 322 F.3d at 659. On the other hand, having
10 Plaintiffs provide their legal arguments and expert opinions with at least seven-days' notice, if not
11 more, would allow Defendants the minimum amount of time necessary to review Plaintiffs'
12 motion and prepare a meaningful response supported by declarations and evidence.

13 CONCLUSION

14 Good cause exists to grant Defendants' request that this Court adopt one of the
15 briefing schedules proposed by Defendants, which would require that Plaintiffs first provide
16 Defendants with their brief so that Defendants can prepare a response tailored to oppose it. At a
17 bare minimum, Defendants should have seven full days to prepare their response, which is likely
18 to include two or more supporting declarations and possibly other evidence. Thus, if this Court is
19 inclined to keep the December 23 hearing on calendar, Defendants request that this Court require
20 Plaintiffs to provide their moving papers (including supporting evidence) by Tuesday, December
21 1. Defendants will then provide their portion of the brief in opposition to Plaintiffs' position by
22 December 8. The parties will work together to identify the areas in dispute and file the joint brief
23 by December 9.

24 Alternatively, Defendants request that the Court simply adopt its own December 31
25 filing deadline option and order: (1) Plaintiffs to provide their brief and expert opinions to
26 Defendants by December 11, 2020, (2) Defendants to provide their responsive brief and expert
27 opinions to Plaintiffs on December 24, 2020, and (3) the parties work together to identify the
28 areas in dispute and finalize the final joint statement to be filed on December 31, 2020.

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DATED: November 27, 2020

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