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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

22 | MARCIANO PLATA, et al..

CASE NO. 01-1351 JST

## Plaintiffs.

## **JOINT CASE MANAGEMENT CONFERENCE STATEMENT**

V.

25 GAVIN NEWSOM, et al.

Judge: Hon. Jon S. Tigar  
Date: February 16, 2021  
Time: 10:00 a.m.  
Crtrm.: 6, 2nd Floor

### Defendants.

1           The parties submit the following joint statement in advance of the February 16,  
 2 2021 Case Management Conference.

3 **I. VACCINES**

4           As of February 8, 2021, 76% of all incarcerated people within CDCR have either  
 5 received at least one dose of the vaccine or have had COVID-19. Thirty-eight percent of  
 6 all incarcerated people have been offered at least one dose of the vaccine, and 68% of all  
 7 people offered have accepted the vaccine (amounting to 26% of the incarcerated  
 8 population having been vaccinated). Of those offered, medically high-risk patients  
 9 accepted the vaccine as follows: COVID-19 naïve patients aged 65 or older accepted the  
 10 vaccine at a rate of 90%; COVID-19 naïve patients with a COVID-19 weighted risk score  
 11 of 6 or higher accepted the vaccine at a rate of 91%; and COVID-19 naïve patients with a  
 12 COVID-19 weighted risk score of 3 or higher accepted dose 1 of the vaccine at a rate of  
 13 83%. And as of February 8, 2021, 39% of staff who work in CDCR's institutions have  
 14 been given at least one dose of the COVID-19 vaccine. Sixty-one percent of all staff have  
 15 either been vaccinated or have had COVID-19. Employees are still required to wear PPE  
 16 and physically distance even with the vaccination.

17           *Plaintiffs' Position:* The vaccination numbers as reported by Defendants and  
 18 CCHCS are indeed impressive, and very welcome. However, it is imperative that the  
 19 amount of vaccine supplied by the State be consistent with the Receiver's ability to  
 20 administer vaccines to the staff and the incarcerated population. Plaintiffs are concerned  
 21 that the State's new vaccine guidelines -- which eliminate any mention of incarcerated  
 22 people, who had previously been listed in Phase 1B -- will drastically reduce the amount of  
 23 vaccines available to CCHCS.<sup>1</sup>

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24  
 25  
 26<sup>1</sup> See Cal. Dep't of Pub. Health, *Updated COVID-19 Vaccine Allocation Guidelines*  
 27 (Feb. 4, 2021), <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/VaccineAllocationGuidelines.aspx>.

1       As of this writing, California has already administered nearly five million vaccine  
 2 doses.<sup>2</sup> The state prison population, with 25,659 doses administered, accounts for one half  
 3 of one percent of that total. Put another way, there are approximately 30.4 million  
 4 Californians eligible to be vaccinated (18 and older),<sup>3</sup> of which 25.4 million have not yet  
 5 received a shot. The remaining approximately 70,000 people in CDCR who require  
 6 vaccination<sup>4</sup> is less than one third of one percent (.28%) of that total. It thus requires only  
 7 a tiny fraction of the State's vaccine allocation to ensure the safety of this extraordinarily  
 8 vulnerable population. Unlike other groups, people living inside prisons cannot effectively  
 9 practice physical distancing to minimize the risk of infection, and many prisons lack  
 10 essential space to quarantine people safely consistent with public health standards.

11       Plaintiffs seek Court intervention to ensure a stable supply of vaccine consistent  
 12 with ability of CCHCS to administer the shots in a timely manner. Data from CCHCS  
 13 indicates that they administered approximately 14,000 vaccine doses to the incarcerated  
 14 population between February 1 and February 8. Accordingly, we seek an order requiring  
 15 Defendants to supply that amount per week until CDCR's incarcerated population has been  
 16 vaccinated. Given the known profound risk of harm from quarantine in shared air space,  
 17 and the clear risk of quarantine in unventilated celled housing units as noted in the  
 18

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19  
 20       <sup>2</sup> See <https://covid19.ca.gov/vaccines/#California-vaccines-dashboard> (last viewed  
 21 Feb. 10, 2021).

22       <sup>3</sup> See <https://censusreporter.org/profiles/04000US06-california> (last viewed Feb. 10,  
 23 2021).

24       <sup>4</sup> Defendants' statement below that "nearly three-quarters of the incarcerated  
 25 population have protection against COVID-19 as a result of either receiving the vaccine or  
 26 recovering from the virus" is misleading; that calculation includes thousands who had  
 27 COVID-19 more than 90 days ago and are thus no longer considered immune from  
 28 reinfection.

1 Ventilation section of this Statement, vaccination is the only remedy that can be effective.<sup>5</sup>

2       *Defendants' Position:*

3       CDCR continues to work closely with CCHCS and their public health partners to  
 4 distribute the COVID-19 vaccine to both staff and incarcerated persons as efficiently and  
 5 expeditiously as possible, and consistent with public health guidance. COVID-19 naïve  
 6 patients at skilled nursing facilities (including, all patients at CMF and CHCF, and certain  
 7 units within CCWF) were initially prioritized to receive the vaccine. All patients at skilled  
 8 nursing facilities have been offered the vaccine. The following additional groups of  
 9 COVID-19-naïve patients are being prioritized in this order: patients age 65 or older at all  
 10 CDCR institutions; patients with a COVID-19 weighted risk score of 6 or greater; patients  
 11 with a weighted risk score of 3 or greater; certain psychiatric patients and patients who  
 12 require a higher level of care; and incarcerated people with jobs. When vaccination of  
 13 these groups is completed, the remaining COVID-19 naïve CDCR population will be  
 14 offered the vaccine.

15       A Vaccination Planning and Implementation Committee continues to meet daily to  
 16 monitor vaccine clinic operations, discuss vaccine priorities, and ensure safe and efficient  
 17 vaccine delivery to staff and patients.

18       The Receiver's Office reported to the parties on February 9 that a group of experts  
 19 convened last week to discuss the topic of mandating COVID-19 vaccines for CDCR  
 20 employees, and that the State will not mandate vaccines for its staff at this time. The  
 21 decision regarding whether to mandate current COVID-19 vaccines involves complex and  
 22 novel issues that the State is still researching and considering. A mandatory vaccine policy  
 23 would require carefully thought-out workplace policies that cannot be developed in a rush,

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25       <sup>5</sup> A federal judge in the District of Oregon recently ordered the state to offer the  
 26 COVID-19 vaccine to every person incarcerated in the state's prison system "as if they had  
 27 been included in Phase 1A, Group 2, of Oregon's Vaccination Plan" – that is, at the same  
 28 time staff were offered the vaccine. *See Maney v. Brown*, No. 6:20-CV-00570-SB, 2021  
 WL 354384, at \*17 (D. Or. Feb. 2, 2021).

1 and there are concerns that mandating the vaccine at this time could create staff shortages.  
2 The State may reevaluate its position as it continues to monitor developments in the law  
3 and workplace policies, the availability of the vaccine, and the outcome of ongoing  
4 scientific studies regarding how effectively the vaccine reduces not just viral infection, but  
5 viral transmission. As the CDC has acknowledged, “[w]hile mRNA COVID-19 vaccines  
6 have demonstrated high efficacy at preventing severe and symptomatic COVID-19, there  
7 is currently limited information on how much the vaccines might reduce transmission and  
8 how long protection lasts.” Available at <https://www.cdc.gov/vaccines/covid-19/info-by-product/clinical-considerations.html>. The State’s position of focusing on voluntary  
9 vaccination in light of limited vaccine supplies, collaboration with employee  
10 representatives to educate staff and promote uptake, and monitoring with basic safety  
11 requirements is in line with national trends: based on news reports, state prison systems  
12 across the country currently do not require their employees to accept the COVID-19  
13 vaccine.

14 Consistent with Centers for Disease Control and Prevention guidelines, CDCR continues  
15 to require staff to wear masks, practice social distancing, and participate in regular  
16 COVID-19 testing as frequently as twice per week. As reported previously and below, the  
17 State takes disciplinary action in instances of noncompliance. To keep the staff and patient  
18 populations informed and to continue to encourage acceptance of the COVID-19 vaccine,  
19 the State continues to focus on educating its staff and incarcerated population on the  
20 benefits of taking the vaccine to encourage higher acceptance rates. For example, CDCR  
21 and CCHCS release educational materials on a regular basis. In addition to the resources  
22 reported in the previous case management conference statement, CDCR and CCHCS  
23 continue to create and circulate educational videos to CDCR’s staff and incarcerated  
24 population. For example, a video of a formerly incarcerated person can be viewed at  
25 <https://vimeo.com/505411415/2900157a35>, and Dr. Heidi Bauer, the head of CCHCS’s  
26 Public Health division, answered frequently asked questions about the vaccine in a video  
27

1 that can be viewed here <https://vimeo.com/499825217/e0d6b1df08>.<sup>6</sup>

2 Plaintiffs' request above for an order requiring a steady supply of 14,000 COVID-  
 3 19 vaccine doses per week is neither necessary nor appropriate. Plaintiffs do not assert  
 4 that there is currently an insufficient supply of the vaccine flowing to the institutions, and  
 5 therefore fail to demonstrate any need to support their request. Indeed, Plaintiffs have  
 6 commended the State's vaccination efforts to date. And in a February 9, 2021 conference  
 7 call with the parties, the Receiver's Office confirmed that incarcerated people continue to  
 8 be included among vaccine priority groups. Moreover, Plaintiffs' request—which has not  
 9 been briefed—ignores the fact that COVID-19 vaccines are a scarce resource nationwide  
 10 and the State receives an unpredictable supply from the federal government.

11 Further, Plaintiffs' failure to distinguish California's vaccine distribution plan from  
 12 *Maney v. Brown*, No. 6:20-CV-00570-SB, 2021 WL 354384, at \*17 (D. Or. Feb. 2, 2021),  
 13 as mentioned in footnote 4, is misleading. While California has prioritized medically  
 14 vulnerable incarcerated people in its initial distribution of vaccines, Oregon had  
 15 completely excluded incarcerated people from its initial distribution of vaccines. In  
 16 *Maney*, the court ordered the State of Oregon to include incarcerated people in the same  
 17 vaccine priority group as prison employees—which Oregon had identified as Group 2 in  
 18 Phase 1A before the court made its decision—in part because incarcerated people and  
 19 prison staff have a ““shared increased risk of disease.”” *Maney*, 2021 WL 354384 at \*1,  
 20 13-14, quoting Centers for Disease Control and Prevention guidelines. In contrast, the  
 21 State of California prioritized vaccine distribution to prison staff and incarcerated people at  
 22 the same time. Additionally, the *Maney* court acknowledged that “[t]he question of which  
 23 groups of Oregonians should receive priority is best left to policymakers.” *Id.* at \*1. But  
 24 here, Plaintiffs appear to ask the Court to take on the role of policymaker by ordering the  
 25 State to vaccinate its incarcerated population, regardless of the priority group they fall into.  
 26

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27       <sup>6</sup> Other educational videos can be viewed at CDCR's YouTube channel,  
 28 <https://www.youtube.com/user/CACorrections/videos>.

1       As described above, and as Plaintiffs acknowledge, Defendants and CCHCS have  
 2 made good progress with vaccine distribution to the incarcerated population. Currently,  
 3 nearly three-quarters of the incarcerated population have protection against COVID-19 as  
 4 a result of either receiving the vaccine or recovering from the virus, and the majority of  
 5 medically high-risk incarcerated people, including those who are 65 or older, have been  
 6 vaccinated. The State is committed to vaccinating the remaining population as quickly as  
 7 possible, consistent with public health guidelines, and based on supplies received from the  
 8 federal government.

9 **II. POPULATION REDUCTION**

10      *Plaintiffs' Position:* "If the coronavirus were designing its ideal home," the  
 11 Receiver told a California Assembly subcommittee earlier this week, "it would build a  
 12 prison."<sup>7</sup> He also bluntly stated, "Unfortunately we know we can never stop the  
 13 movement and spread of this virus, no matter how hard we try."<sup>8</sup> Similarly, CDCR  
 14 Secretary Allison also recently acknowledged that CDCR prisons' "large population and  
 15 physical layout make us particularly susceptible to the spread of COVID-19."<sup>9</sup> These  
 16 truths, learned and re-learned at great cost, show precisely why urgent population  
 17 reductions are necessary to minimize the risks and harm from COVID-19 to those  
 18 incarcerated in CDCR.<sup>10</sup>

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19

20      <sup>7</sup> See Assembly Budget Subcommittee No. 5 on Public Safety, Monday, February 8  
 21 2021, available at <https://www.assembly.ca.gov/media/budget-subcommittee-5-public-safety-20210208/video> [at 1:38:25 et seq.].

23      <sup>8</sup> *Id.*

24      <sup>9</sup> See Cal. Dep't of Corr. & Rehab., *Important COVID-19 message from Secretary Allison* (Dec. 4, 2020), <https://www.cdcr.ca.gov/insidecdcr/2020/12/04/important-covid-19-message-from-secretary-allison>.

26      <sup>10</sup> As of February 10, there were 91,073 people in CDCR's prisons and camps. See  
 27 CDCR Weekly Report of Population (February 10, 2021) at Part A.I.1 (Institution/Camp),  
<https://www.cdcr.ca.gov/research/wp>-

1        This Court has repeatedly called for CDCR to release more of the medically  
 2 vulnerable, particularly the elderly, to reinstate the program permitting release of some  
 3 with less than a year left to serve, and to grant additional “Positive Programming Credits”  
 4 given the efforts of the incarcerated to limit viral spread over the last several months and  
 5 the fact that limitations on the availability of milestone and achievement credits have  
 6 resulted in people serving more time than they would have but for the pandemic. At the  
 7 last Case Management, the Court noted that Defendants in their Statement had not  
 8 provided reasoning for or an explanation of why these suggestions, which we have  
 9 repeatedly made as well, have not been undertaken.

10      Defendants below again have no explanation for why they are not granting  
 11 additional medical reprieves or early releases of those most at risk of harm and death from  
 12 COVID-19. Nor do they directly explain why additional Positive Programming Credits  
 13 (PPCs), similar to the 12 weeks granted to many in July, are not being granted.  
 14 Defendants say the pandemic “has not affected the awarding of good conduct credits to  
 15 eligible people.” But this misses the mark. We believe the pandemic has reduced  
 16 opportunities to earn, and thus the awarding of, Milestone Completion, Rehabilitation  
 17 Achievement, and Educational Merit Credits, available to many in addition to good  
 18 conduct credits. In this way, it appears the pandemic has resulted in people serving longer  
 19 terms.<sup>11</sup>

20      *Defendants’ Position:* CDCR’s population has decreased by 26,269—or over  
 21

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22 content/uploads/sites/174/2021/02/Tpop1d210203.pdf. As we have previously explained,  
 23 this total represents a reduction of approximately 26,000 from mid-March 2020, but it  
 24 results primarily from natural releases and the slowing or closing of intake. With regard to  
 25 intake, CDCR Secretary Kathy Allison reported last week that 10,700 people are in county  
 jails pending transport to CDCR.

26      <sup>11</sup> On February 12, we requested data regarding Milestone Completion, Rehabilitation  
 27 Achievement, and Educational Merit Credits granted in 2019 and 2020.  
 28

1 22%—since the start of the COVID-19 public health crisis.<sup>12</sup> Between July 1, 2020 and  
 2 February 10, 2021, 7,574 people were released from institutions and camps through the  
 3 COVID-19 early-release programs Defendants announced on July 10, 2020.<sup>13</sup> This  
 4 represents 322 more early releases than those reported in the January 26, 2021 case  
 5 management conference statement.<sup>14</sup> An additional 13,481 people were released in  
 6 accordance with their natural release dates. CDCR’s institutions currently house  
 7 approximately 89,663 people.<sup>15</sup>

8       CDCR implemented a number of early-release programs based on the Secretary’s  
 9 authority under California Government Code § 8658 in response to the COVID-19  
 10 pandemic, several of which were announced on July 10, 2020. CDCR continues to process  
 11 early releases on a rolling basis through the 180-day early-release program announced on  
 12 July 10, which has accounted for the vast majority of early releases since  
 13 then. Additionally, the Governor has granted medical reprieves of sentences to 10 people  
 14 deemed by the Receiver to be at high risk for potential complications from COVID-19, and  
 15 continues to review potential cases. These individuals range in age from 69 to 85 years  
 16 old. And as previously reported, CDCR’s Secretary has released medically high-risk  
 17 people based on discretionary individual reviews, and has referred incarcerated people to  
 18 \_\_\_\_\_

19<sup>12</sup> This figure is calculated by taking the difference between the total population in  
 20 institutions and camps on February 26, 2020 and February 10, 2021. Weekly population  
 21 reports can be found at <https://www.cdcr.ca.gov/research/weekly-total-population-report-archive-2/>.

22<sup>13</sup> See ECF No. 3389 at 2:4-5:4 and <https://www.cdcr.ca.gov/covid19/expedited-releases/> for details regarding CDCR’s COVID-19 early-release program announced on  
 23 July 10, 2020.

25<sup>14</sup> See ECF No. 3539 at 7:12-14.

26<sup>15</sup> See February 10, 2021 population report at <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/02/Tpop1d210210.pdf>.

1 the courts for possible reconsideration of their sentences under Penal Code section  
 2 1170(d)(1).

3       CDCR previously awarded 12 weeks of positive programming credits to eligible  
 4 incarcerated people under California Code of Regulations, Title 15, section 3043.6 to  
 5 recognize the incarcerated population's efforts, and the impact on their ability to earn  
 6 program credits during COVID-19.<sup>16</sup> Later, CDCR expanded this program to include  
 7 people in county jails awaiting transfer to a CDCR institution. CDCR is not currently  
 8 planning to award more credits under section 3043.6 at this time, but may reconsider in the  
 9 future. The pandemic has not affected the awarding of good conduct credits to eligible  
 10 people under section 3043.2. Incarcerated people not sentenced to death or a term of life  
 11 without the possibility of parole earn good conduct credit in the following manner: people  
 12 serving a determinate or indeterminate term for a violent felony earn one day of credit for  
 13 every four days of incarceration, unless eligible for greater credit; people serving a  
 14 sentence under the Three Strikes Law, Penal Code section 1170.12(c), or Penal Code  
 15 section 667(c) or (e) earn one day of credit for every two days of incarceration, unless  
 16 eligible for greater credit; and others earn one day of credit for every day of incarceration.  
 17 Cal. Code. Regs. tit. 15, § 3043.2.

18       Incarcerated patients' COVID weighted risk score is only one of many factors  
 19 considered by CDCR in determining whether early release is appropriate, including,  
 20 among others, risk to public safety, victim's rights, risk of recidivism, and time served.  
 21 Further, incarcerated persons who may be *eligible* for parole may nonetheless be  
 22 determined not to be *suitable* for parole due to the unreasonable risk of current danger they  
 23 pose, as determined by a panel of Board of Parole Hearings commissioners and deputy  
 24 commissioners.

25 **III. QUARANTINE AND ISOLATION**

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27  
 28<sup>16</sup> See letter to all incarcerated people at <https://www.cdcr.ca.gov/covid19/letter-to-all-incarcerated-people/>.

1           *Plaintiffs' Position:* Plaintiffs' motion remains pending before the Court. Plaintiffs  
 2 seek a ruling on the matter for the reasons set forth in the above section on vaccination.

3           Strategies to Encourage Moves to Quarantine and Isolation Housing

4           At the last CMC, Plaintiffs raised the concern that medical orders for movement to  
 5 isolation or quarantine housing were, in a significant number of cases, not carried out.  
 6 CDCR and CCHCS attributed the failure to move to a number of factors, including that  
 7 some incarcerated people had refused, choosing instead to remain in their cell or dorm  
 8 despite the potential health risks to themselves and others in the unit. The Court directed  
 9 Plaintiffs to identify potential strategies to address this issue, and rank them based on the  
 10 expense involved and likely efficacy. ECF No. 3545 at 27-28.

11           Shortly after the hearing, we provided Defendants with a list of five measures they  
 12 could adopt to encourage compliance with the isolation/quarantine orders, ranked based on  
 13 our estimate of the relative costs. After conducting phone interviews with 57 incarcerated  
 14 people who were identified as recently refusing moves at California State Prison–Los  
 15 Angeles County, Calipatria State Prison, R.J. Donovan State Prison (RJD), and Pleasant  
 16 Valley State Prison,<sup>17</sup> we provided a revised list of four measures to Defendants, ranked  
 17 based on expense and efficacy. The measures we proposed, in the order endorsed by our  
 18 clients, are:

- 19           1.       Arrange for an extra video visit with loved ones.
- 20           2.       If the person has a job and pay number, continue to pay the person for their  
                 work during the time they are under quarantine and/or isolation, even though they will  
                 likely be unable to work.
- 21           3.       Commit to making every effort to return each person their original housing,  
                 whenever possible, if that is what they want.
- 22           4.       Compensate people for the risk and inconvenience of moving. Provide each

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27           <sup>17</sup> We appreciate Defendants' help in arranging for these confidential phone calls with  
 28 the class members with very short notice.

1 person who voluntarily moves with \$25 credit at canteen.

2        We added the video visit option after our phone calls with class members, at their  
 3 suggestion. A number of class members explained that, having endured many months  
 4 without seeing their loved ones, the prospect of video contact would be a strong incentive  
 5 to comply with the public health orders. Plaintiffs are pleased to learn today that  
 6 Defendants plan to issue a memo shortly setting forth the incentives that CDCR is willing  
 7 to offer, including the option of an additional video visit if available, to those who comply  
 8 with the health-based housing orders. Plaintiffs will follow up with Defendants to  
 9 determine the availability of video visits at the 35 state prisons.

10      While discussing our proposed strategies with the class members, we identified  
 11 other factors that impact movement. At RJD, people told us staff had indicated that the  
 12 moves were optional, and that if they signed off on a 128-A (a refusal chrono), they could  
 13 remain. Others at that prison said that when they were told they had to move, they packed  
 14 their cells and waited but staff never returned. And while the December Outbreak  
 15 Management Tools reported that hundreds of patients had refused to move during the  
 16 outbreak at Pleasant Valley, when we asked for a list of patients who had refused to move  
 17 at this prison, Defendants provided us with the names of only 5 patients.

18      People at Pleasant Valley, Calipatria, and RJD also told us they refused moves  
 19 because the quarantine units were located on Sensitive Needs Yards, and they did not  
 20 believe they would be safe moving there from a General Population Yard. Three people at  
 21 RJD refused having heard that the gym conditions for the isolation unit were crowded, and  
 22 they would have to go outside to use the porta-potties and portable showers.

23      Many of those who refused at Lancaster expressed concern that the moves were  
 24 proposed too late, after the virus had taken hold in housing units and thus they served no  
 25 point. Some believed that the prison was spreading the virus by moving people in and out  
 26 of different housing units, a concern also expressed by the members of the Court's  
 27 Advisory Board in December that prompted the Receiver's decision to suspend required  
 28 moves to quarantine units in favor of quarantining in place. In this context, we were

1 troubled to learn that, of the 17 Lancaster residents we spoke to, 11 reported that they were  
 2 given Rules Violation Reports (RVRs) for refusing to move, including an 85-year-old man  
 3 who reported he was confused about whether the moves were optional, and a man who  
 4 said he returned from the hospital after being treated for COVID pneumonia for four days  
 5 and felt too weak to pack his cell and move. RVRs can (and we understand did here)  
 6 result in the loss of time credits, and are considered during parole hearings.

7       Based on our survey, it became apparent that the strategy of offering compensatory  
 8 measures to those who agree to leave their housing for a quarantine or isolation unit will  
 9 likely induce some to comply. Better compliance could also be obtained by better  
 10 oversight from managers to ensure that communication with the incarcerated population is  
 11 clear and accurate and that refusals are genuine. Another crucial measure, which Plaintiffs  
 12 have maintained from the beginning of the quarantine/isolation set-aside process, is to  
 13 designate separate space for people who are on Sensitive Needs and General Population  
 14 Yards. Indeed, in our September 16 request for modification of the set-aside spaces, we  
 15 stated that “there should be separate isolation and quarantine space for each classification,”  
 16 and that at the prisons where this hadn’t been done, “CDCR and CCHCS face a very real  
 17 possibility that large numbers of people will refuse to be tested and/or refuse to be moved  
 18 to the designated isolation and quarantine space.” *See* ECF No. 3503 at 11. Prisons that  
 19 have not yet designated separate isolation and quarantine space for people on Sensitive  
 20 Needs and General Population Yards must do so immediately.

21       Finally, it was clear from these interviews, as well as from countless letters and  
 22 interviews in the years prior to the pandemic, that a substantial population of incarcerated  
 23 people in California deeply mistrust the custody and medical leadership in the prisons, and  
 24 may not agree to the moves under any conditions. We cannot stress enough the  
 25 importance of ameliorating this mistrust in order to achieve a healthy, functioning health  
 26 care system. This problem cannot be solved during the pandemic, but its impact on  
 27 CDCR’s and CCHCS’s efforts to control the spread of the virus is a clear indication that it  
 28 must be solved if CDCR is to achieve its goals in providing constitutional care.

1        *Defendants' Position:* Defendants have continued to make efforts to ensure that  
 2 prisons comply with the Receiver's isolation and quarantine guidance provided on  
 3 December 4 and 18, 2020, by closely monitoring the prisons use of reserved quarantine  
 4 space. When it has been discovered that the guidance has not been correctly followed at a  
 5 particular prison, CDCR headquarters has issued strenuous corrective instructions.

6        In the last Case Management Conference Statement, Plaintiffs called into question  
 7 the accuracy of Defendants' statements that patients at RJD and LAC were not housed in  
 8 the appropriate quarantine or isolation housing because they had refused to move. *See* Jan.  
 9 28, 2021 CMC Statement at 10:10-11 ("Defendants' assertion that most of these housing  
 10 failures are a result of patient refusals to move rings hollow."), ECF No. 3539. Since that  
 11 time, on February 2, 2021, Defendants provided Plaintiffs' counsel with the names of  
 12 hundreds of patients at Pleasant Valley State Prison, Calipatria State Prison, RJD, and  
 13 LAC who refused medically-directed moves to quarantine or isolation cells. Defendants  
 14 also set up calls for multiple Prison Law Office attorneys to conduct simultaneous  
 15 interviews of these patients, based on a list of approximately 100 patients provided by  
 16 Plaintiffs' counsel.

17        Additionally, CCHCS recently conducted a special review of the patients who  
 18 refused to participate in COVID-19 testing and bed moves at California Correctional  
 19 Institution (CCI). The review concluded that patients were refusing to test because of a  
 20 concern they would have to move cells or lose their cellmate; patients also stated they were  
 21 tired of having their program (and job assignments) disrupted when they are placed on  
 22 quarantine (even if they test negative). Additionally, the patients believe that the spread of  
 23 COVID-19 is caused by the moving of patients into set aside space, rather than keeping  
 24 them isolated in place. In short, the review concluded that "[t]he quarantine process is  
 25 what is driving the refusals ...."

26        Following the last case management conference, Plaintiffs' counsel provided  
 27 Defendants with a list of five proposals to encourage incarcerated persons to comply with  
 28 medical directives to move to quarantine or isolation space. Several of these proposals had

1 previously been discussed between the parties in the context of incentivizing medically  
 2 high-risk patients to move to celled housing at different institutions. Defendants have  
 3 agreed to implement several of the Plaintiffs' proposals, with modifications. To that end,  
 4 Defendants will issue a memorandum by the end of this week describing the following  
 5 incentives:

- 6           • For persons who moved for placement in quarantine or isolation housing, if  
               7 the person has a job, with or without pay number, every effort will be made  
               8 to retain the person in their assignment. If this is not possible (for instance,  
               9 the person is relocated to a different yard, it was an essential job and workers  
               10 were needed to fill that position), once released from quarantine or isolation  
               11 housing, the person will be placed at the top of the wait list and will be  
               12 assigned appropriately. This will only apply if the person remains at the  
               13 same institution.
- 14           • Persons will be allowed to bring all of their property to the isolation or  
               15 quarantine housing.
- 16           • CDCR will commit to making every effort to return each person to their  
               17 original housing, whenever possible, if that is what the person wants.
- 18           • Persons who comply with directions for placement in quarantine or isolation  
               19 housing, upon release from such housing, will be afforded one additional  
               20 video visiting session, based on availability.

21  
 22           Finally, after again revising the relief they request, Plaintiffs ask the Court to rule  
 23 on their quarantine and isolation motion. But in light of the fact that 76% of CDCR's  
 24 incarcerated population has now either contracted COVID-19 or received at least one dose  
 25 of the vaccine, the Receiver has indicated that his office is considering a "re-set" of current  
 26 quarantine guidelines which set forth the amount of space that each prison must set aside  
 27 for quarantine and isolation. With this development, it would be inappropriate for the  
 28 Court to rule on Plaintiffs' quarantine and isolation motion at this time. Moreover,

1 Plaintiffs' requested relief has changed several times over the course of the months since  
 2 their motion was first filed. If Plaintiffs want an order granting the relief they now  
 3 apparently seek, which differs significantly from the relief initially requested, they must be  
 4 required to file a motion seeking it, and Defendants should be afforded the opportunity to  
 5 formally respond to Plaintiffs' new request through motion practice.

#### 6 **IV. STAFF SCREENING AND TESTING**

7 *Plaintiffs' Position:* Staff testing remains a critical component of preventing the  
 8 introduction and spread of COVID-19 in the prisons. Unfortunately, failures to comply  
 9 with testing continue. On February 9, CCHCS reported that 64 CDCR staff members had  
 10 been placed on leave without pay for failure to comply with the testing policies since  
 11 December 21. And, in the biweekly noncompliance logs we regularly receive from  
 12 CCHCS and CDCR, CDCR documented 46 staff refusals to test during the month of  
 13 January.

14 As reported at the last Case Management Conference, Plaintiffs previously raised  
 15 the concern that CDCR and CCHCS lack a process to timely identify staff who have failed  
 16 to comply with mandatory COVID-19 testing. Currently, prison staff review a list of  
 17 employees who tested the week before, compare it to a list of employees who worked that  
 18 week, and investigate those employees who appear to have worked but were not tested.  
 19 Although CDCR and CCHCS issued a joint memorandum on December 21 stating that  
 20 "any employee who refuses to comply with mandatory COVID-19 testing shall not be  
 21 permitted to enter the institution or facility and shall be placed on approved dock (without  
 22 pay) until they comply with mandatory testing," ECF No. 3530 at 20 (January 13 Joint  
 23 CMC Statement); ECF No. 3510 at 14 (December 22 Joint CMC Statement); ECF No.  
 24 3520-1 (December 21 memorandum), employees who are identified through this process  
 25 are not immediately placed on leave. Instead, they are directed to report for testing within  
 26 a specific timeframe and are only placed on leave if they again fail to test when directed to  
 27 do so.

28 This process will not ensure that employees showing up to work each day have been

1 tested in accordance with the Employee Testing Guidance. Rather, this process will  
 2 identify noncompliant staff only the week after they have worked, perhaps for many days,  
 3 without having been tested. Even then, employees are only directed to be tested, and are  
 4 permitted to continue working unless they again fail to report for testing. This process also  
 5 will not identify whether particular employees were tested every 7 days, as is required by  
 6 the testing guidance, but only whether employees were tested at some point during the  
 7 week they worked.

8       On January 25, we met with CCHCS and CDCR to discuss these concerns. We  
 9 suggested that CCHCS and CDCR monitor compliance with testing policies during the  
 10 entrance screening process, for example, by (1) asking employees whether they have been  
 11 tested within the required timeframe during entrance screening and (2) producing a list  
 12 each day of all employees who have been tested during the previous 7 days and cross-  
 13 referencing that list during entrance screening to ensure staff have been tested. On  
 14 February 12, CCHCS reported that they would revise their system: by March 15, they will  
 15 ask staff whether they had complied with the 7-day testing requirement during the entrance  
 16 screening process, and if staff have not complied, they will be immediately tested onsite.  
 17 We support this change.

18  
 19       Unfortunately, during our call with CCHCS on February 12, we learned of another  
 20 serious gap in the staff testing program: staff who call in sick or whose symptoms are  
 21 discovered during entrance screening are sent home for the day, but are not required to be  
 22 tested for COVID-19 or isolate at home for any period of time before returning to work.  
 23 That is, staff who are sick with symptoms of COVID-19 can simply return to work the  
 24 following day, if they are no longer symptomatic. We raised this issue in our July 2020  
 25 motion regarding the staff testing program, *see* ECF Nos. 3402 at 4-6 (Plaintiffs' Motion);  
 26 3402-1 at ¶ 7 (Declaration of Adam Lauring); 3402-3 at ¶ 1 (Proposed Order), and were  
 27 told the problem would be solved by hiring nurses to provide COVID-19 testing to  
 28 symptomatic staff. During a call with CCHCS on November 13, we were also told that,

1 until CCHCS could hire enough nurses to conduct this testing, symptomatic employees  
 2 who did not get tested would be required to self-isolate at home for ten days before  
 3 returning to work. Unfortunately, in a call with CCHCS on February 12, we were told  
 4 otherwise: staff reporting symptoms of COVID-19 were not, and never had been, required  
 5 to isolate at home. We are deeply concerned by the failure to implement such a policy,  
 6 which we have been calling for since July. CCHCS and CDCR must immediately  
 7 implement a policy requiring staff who are symptomatic to either (1) provide proof of a  
 8 negative COVID-19 test result or (2) self-isolate at home and not report to work until (a) it  
 9 has been at least 10 days since symptoms first appeared, (b) it has been at least 24 hours  
 10 with no fever without fever-reducing medication, and (c) other symptoms of COVID-19  
 11 are improving. *See* CDC, *Isolate if You Are Sick*, <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/isolation.html> (last updated Jan. 7, 2021); *see also* ECF No. 3402-1 at  
 ¶ 7 (Lauring Decl.).

14 Finally, regarding the production of staff testing data, CCHCS on February 9 stated  
 15 that staff testing reports had been completed for the month of January and would be  
 16 provided to Plaintiffs that day. We have not yet received these reports. On February 12,  
 17 CCHCS informed us that the reports would be sent to us by February 16 (the date of this  
 18 Case Management Conference).

19 *Defendants' Position:* While currently all health care staff are in compliance with  
 20 this mandate, 64 custodial staff are on leave without pay due to their failure to abide by  
 21 CDCR's testing requirements. CDCR is supportive of the Receiver's efforts to ensure  
 22 compliance with staff testing requirements and is working closely with CCHCS to improve  
 23 custodial compliance. For instance, CDCR is currently in the final stages of preparing a  
 24 survey to be sent to all CDCR custodial staff asking what challenges staff face in terms of  
 25 testing, social distancing, and mask wearing, and what reasons staff may have for failing to  
 26 comply with these COVID-19 protections. The survey also seeks suggestions on how  
 27 CDCR could help improve compliance. Additionally, CCHCS, which oversees staff  
 28 testing and screening for CDCR employees, is evaluating its current guidelines and

1 processes to determine the feasibility of changes that may identify and resolve instances of  
 2 noncompliance faster. CDCR will implement and comply with any updated policies and  
 3 work with CCHCS to seek solutions to improve compliance.

4 **V. VENTILATION**

5       *Plaintiffs' Position:* We believe housing unit ventilation is a significant vector in  
 6 the spread of coronavirus, particularly in cold weather months when air handling units  
 7 largely use recirculated as opposed to fresh air. We have previously asked CDCR about  
 8 housing unit filters, and were told a multi-month project is underway to determine if the  
 9 prisons can install and use filters that may decrease circulation of aerosolized microbes  
 10 associated with coronavirus. In December, the Receiver reported that he had requested  
 11 public health experts review the ventilation systems at several prisons and provide  
 12 recommendations. We welcome this review. Particularly in light of the substantial  
 13 outbreaks that occurred in some celled housing units this winter, we believe it is critical  
 14 that the prisons' ventilation systems be assessed. The CDCR this week said it has received  
 15 the experts' report pertaining to housing unit ventilation at the California State Prison and  
 16 Substance Abuse Treatment Facility (SATF). We have asked for a copy of this report.

17       *Defendants' Position:*

18       CDCR provided direction to prisons on December 18, 2020 to increase the filter  
 19 efficiency within housing unit air handling units (AHUs), preferably to a MERV-13  
 20 efficiency level, as long as the air volume of the AHU was not decreased by more than 10  
 21 percent from its current volume. Prior to this date, two prisons (Avenal State Prison and  
 22 Pleasant Valley State Prison) already utilized MERV-13 filters in their housing unit AHUs.  
 23 An additional 40 housing units at five other prisons (including the California Health Care  
 24 Facility) also utilized MERV-13 filters in their housing unit AHUs. MERV-13 filters have  
 25 recently been installed in housing unit AHUs at two additional prisons (Chuckawalla  
 26 Valley State Prison and R.J. Donovan Correctional Facility). These filters will continue to  
 27 be installed at other prisons as the filters are from vendors.

28       The MERV-13 filter is intended to minimize COVID-19 spread within housing

1 units where the AHUs recirculate air from within the housing units during months with  
 2 colder outside air temperatures. CDCR notes, however, that the AHUs at many prisons  
 3 already operate on 100% outside air supply and do not recirculate air from within the  
 4 housing units back through the air handling unit. In addition, some ventilation systems are  
 5 not configured to recirculate interior air, and other locations depend upon windows for  
 6 ventilation, so these locations also operate on 100% outside air. Eight prisons report that  
 7 they are operating their housing units entirely on 100% outside air (California Institution  
 8 for Men, California Institution for Women, California Men's Colony, California Medical  
 9 Facility, Ironwood State Prison, California State Prison – Los Angeles County, California  
 10 State Prison Solano and San Quentin State Prison). Additionally, the large majority  
 11 (between 79 percent and 95 percent) of housing units at California Rehabilitation Center,  
 12 Correctional Training Facility, Deuel Vocational Institution and Folsom State Prison  
 13 utilize 100 percent outside air, as do 19 housing units at California State Prison  
 14 Sacramento, Mule Creek State Prison, and Substance Abuse Treatment Facility.

15 **VI. OIG REPORT REGARDING THE MAY 2020 TRANSFER OF PATIENTS  
 16 FROM CALIFORNIA INSTITUTION FOR MEN TO SAN QUENTIN  
 17 STATE PRISON**

18 *Plaintiffs' Position:* The Office of the Inspector General (OIG) recently released its  
 19 third report in its review of CDCR's response to the COVID-19 pandemic, focusing on the  
 20 May 2020 transfer of high risk medical patients from CIM to San Quentin. *See* Office of  
 21 the Inspector General, *California Correctional Health Care Services and the California*  
*22 Department of Corrections and Rehabilitation Caused a Public Health Disaster at San*  
*23 Quentin State Prison When They Transferred Medically Vulnerable Incarcerated Persons*  
*24 From the California Institution for Men Without Taking Proper Safeguards* (February  
 25 2021), [https://www.oig.ca.gov/wp-content/uploads/2021/02/OIG-COVID-19-Review-](https://www.oig.ca.gov/wp-content/uploads/2021/02/OIG-COVID-19-Review-Series-Part-3-%E2%80%93-Transfer-of-Patients-from-CIM.pdf)  
*26 Series-Part-3-%E2%80%93-Transfer-of-Patients-from-CIM.pdf*. The OIG found that the  
 27 efforts by CCHCS and CDCR to prepare for and execute the transfers were "deeply  
 28 flawed." As has been previously reported to this Court, the OIG found the vast majority of  
 those transferred had not been recently tested for COVID-19. *See* ECF No. 3345 at 9. The

OIG reviewed and cited email conversations indicating that a CIM health care executive and multiple CCHCS and departmental executives were aware of the outdated nature of the tests before the transfers occurred. The OIG also reported that they did not believe the department had provided them all pertinent emails related to the transfer. Finally regarding the preparation efforts for the transfers, the OIG discovered that prison health care staff conducted screenings too early to determine whether those transferring had symptoms of COVID-19 when they boarded the buses. Separately, the OIG also found problems with how the transfers were handled at San Quentin: the prison was unable to properly quarantine and isolate those exposed to or infected with COVID-19, and allowed staff to work throughout the prison during shifts or on different days, which the OIG found “likely caused the virus to spread to multiple areas of the prison.”

Plaintiffs are deeply concerned about the findings in this report. We have already had a productive conversation with CCHCS leadership on the topic and plan to engage with CDCR leadership as well, to determine whether additional measures are necessary to minimize the risk of recurrence of such a disastrous event.

*Defendants' Position:* The Office of the Inspector General published a report on February 1, 2021 focusing on the decision to transfer 189 medically vulnerable incarcerated persons from the California Institution for Men (CIM) to California State Prison, Corcoran (Corcoran), and San Quentin. The Inspector General concluded that the efforts by CCHCS and CDCR to prepare for and execute the transfer were deeply flawed and risked the health and lives of thousands of incarcerated persons and staff members. Importantly, the Receiver explained in recent testimony before the Legislature:

Public health agencies back in May [2020] believed COVID spread by droplets, not aerosolization. That evolving knowledge is important because assuming droplet-only transmission, the space at San Quentin would have been an appropriate place for quarantine, and to test the patients arriving from CIM. Based on what was known at the time, we believed San Quentin was a safer place than CIM for these inmates. As we have learned, and was ultimately confirmed by the Centers for Disease Control and Prevention in October of

1 last year, COVID does spread by aerosolization, and so a move  
 2 to San Quentin failed . . . Ultimately, we have learned from the  
 3 San Quentin outbreak. And as the OIG report indicates, we  
 4 subsequently made a substantial number of improvements in  
 5 our policies and procedures related to managing outbreaks and  
 6 moving patients, so that a San Quentin type failure has not  
 7 happened again.

8 *Update on COVID-19 Mitigation Efforts in CDCR: Assembly Budget Subcommittee No. 5  
 9 on Public Safety* (Feb. 8, 2021) (statement of Clark Kelso, Federal Receiver), at 1:36:42 -  
 10 1:38:19, <https://www.assembly.ca.gov/media/budget-subcommittee-5-public-safety-20210208/video>.

11 Ultimately, the Inspector General acknowledged that following the transfers from  
 12 CIM to Corcoran and San Quentin, CDCR made efforts to identify and designate sufficient  
 13 space at each institution to follow public health guidance on isolating and quarantining  
 14 patients in the event of a future COVID-19 outbreak. The IG recognized the following  
 15 actions taken in the ensuing months: (1) CDCR and CCHCS have continued issuing  
 16 updated guidance addressing the process for transferring incarcerated persons between  
 17 prisons; (2) CDCR and CCHCS announced requirements effective June 10, 2020, directing  
 18 that any incarcerated person scheduled to transfer to another prison be required to test  
 19 negative for COVID-19 within seven days of transfer and that if more than seven days had  
 20 elapsed since the date of the test, the incarcerated person would need to be retested before  
 21 the transfer could take place; (3) on July 31, 2020, CDCR submitted maps of 31  
 22 institutions in which space had been set aside for isolation and quarantine; and, (4) on  
 23 August 19, 2020, and then again on January 12, 2021, CDCR and CCHCS issued updated  
 24 requirements placing more stringent timelines on COVID-19 transfer screening, testing,  
 25 retesting, quarantine, and isolation. All of these actions were taken by CDCR, in  
 26 consultation with experts and CCHCS's review, before the Inspector General published his  
 27 report. Yet, the Inspector General's report did not evaluate CDCR's updated plans and  
 28 related actions since the San Quentin outbreak.

Since this transfer took place, the Receiver and the State have described to this

1 Court and Plaintiffs the myriad efforts to minimize the risk of recurrence of a similar  
2 transfer, and these efforts continue to evolve. CDCR has been following CCHCS's revised  
3 guidance for movement and transfers since it was first finalized in August 2020. This  
4 guidance was recently revised a third time consistent with evolving public health  
5 guidelines and based on lessons learned from months of execution of previous versions the  
6 guidance.

In a conference call with the parties on January 21, 2021, the Receiver's Office stated that it was unaware of any COVID-19 transmissions based on transfers done in accordance with the movement matrix. In a conference call with the parties on February 9, 2021, the Receiver's Office expressed its confidence that staff involved in executing these moves are following the protocols in place. Defendants remain committed to working closely with the Receiver's Office to ensure the safety of its incarcerated population.

13 | VII. OIG REPORT REGARDING FACE COVERING AND PHYSICAL DISTANCING FOLLOW-UP MONITORING

On February 12, 2021, the parties received the OIG's report on Face Covering and Physical Distancing Follow-Up Monitoring. The parties are in the process of reviewing this report. The report is attached as **Exhibit A** at the OIG's request.

18 | DATED: February 12, 2021

HANSON BRIDGETT LLP

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1 DATED: February 12, 2021

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10 DATED: February 12, 2021

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# **Exhibit A**

STATE of CALIFORNIA

OFFICE of the  
INSPECTOR GENERALRoy W. Wesley, Inspector General  
Bryan B. Beyer, Chief Deputy Inspector General

Independent Prison Oversight

**Regional Offices**Sacramento  
Bakersfield

Rancho Cucamonga

**Face Covering and Physical Distancing Follow-up Monitoring****Introduction**

In October 2020, the Office of the Inspector General (the OIG) issued a public report regarding the California Department of Corrections and Rehabilitation's (the department) compliance with face covering and physical distancing requirements for staff and incarcerated persons. The report identified frequent noncompliance by both staff and incarcerated persons, lax enforcement efforts by departmental supervisors and managers, and questioned the prudence of loosening of face covering requirements in June 2020. In response to the report, United States District Court Judge Jon S. Tigar invited the OIG to conduct follow-up monitoring at the department's prisons to observe and report whether staff and incarcerated persons have come into compliance with the department's current requirements. Below are the results of our monitoring activities from January 7 through February 6, 2021.

**Unannounced Monitoring Visits and Video Review**

Our staff conducted unannounced visits at 18 prisons and one juvenile facility. These visits focused on face covering and physical distancing compliance among staff and incarcerated persons. Our staff visited various locations throughout each prison visited. Additionally, where possible, we reviewed a sampling of video recordings from the prisons with usable footage. Although most staff, incarcerated persons, and youths adhered to the department's requirements, we still observed significant noncompliance at several prisons and juvenile facilities. Our most significant observations are detailed on the next page.

Based on our observations we assigned each prison two ratings, one for staff's compliance and one for the incarcerated population's compliance. The ratings are defined on the next page, at the end of the table.

Facility	Staff Face Covering Compliance	Incarcerated Population Face Covering Compliance
California Correctional Institution	Substantial Compliance	Significant Non-Compliance
California Institution for Women	Full Compliance	Substantial Compliance
California State Prison, Corcoran	Full Compliance	Substantial Compliance
California State Prison, Los Angeles County	Substantial Compliance	Significant Non-Compliance
California State Prison, Solano	Partial Compliance	Significant Non-Compliance
Central California Women's Facility	Full Compliance	Full Compliance
Centinela State Prison	Substantial Compliance	Full Compliance
Correctional Training Facility	Full Compliance	Substantial Compliance
Deuel Vocational Institution	Partial Compliance	Substantial Compliance
Folsom State Prison	Substantial Compliance	Substantial Compliance
High Desert State Prison	Partial Compliance	Significant Non-Compliance
Ironwood State Prison	Full Compliance	Full Compliance
Kern Valley State Prison	Partial Compliance	Substantial Compliance
Mule Creek State Prison	Partial Compliance	Significant Non-Compliance
North Kern State Prison	Full Compliance	Substantial Compliance
Pleasant Valley State Prison	Full Compliance	Substantial Compliance
Richard J. Donovan Correctional Facility	Substantial Compliance	Significant Non-Compliance
Sierra Conservation Center	Full Compliance	Partial Compliance
O.H. Close Youth Correctional Facility	Substantial Compliance	Significant Non-Compliance

**Compliance Rating Definitions – Staff**

<b>Full Compliance</b>	Zero non-compliant individuals observed without face coverings or improperly wearing face coverings
<b>Substantial Compliance</b>	Very few (typically, 3 or fewer) non-compliant individuals observed without face coverings or improperly wearing face coverings
<b>Partial Compliance</b>	Several (typically, 6 to 10) non-compliant individuals observed without face coverings or improperly wearing face coverings
<b>Significant Non-Compliance</b>	Many (typically, more than 10) non-compliant individuals observed in the locations we visited within the facility

**Compliance Rating Definitions – Incarcerated Persons**

<b>Full Compliance</b>	Zero non-compliant individuals observed without face coverings or improperly wearing face coverings
<b>Substantial Compliance</b>	Very few (typically, 5 or fewer) non-compliant individuals observed without face coverings or improperly wearing face coverings
<b>Partial Compliance</b>	Several (typically, 6 to 10) non-compliant individuals observed without face coverings or improperly wearing face coverings
<b>Significant Non-Compliance</b>	Many (typically, more than 10) non-compliant individuals observed without face coverings or improperly wearing face coverings

Additional factors that could influence a rating other than the number of non-compliant individuals:

- Total number of individuals in the location. For example, 2 non-compliant individuals in a location among 150 total people was viewed more favorably than 2 non-compliant individuals in a location among 3 total people.
- If staff was observed quickly correcting the incarcerated persons who were not properly wearing face coverings.
- Physical distancing among non-compliant individuals. For example, if we observed 3 separate individuals not properly wearing masks outside and far away from other people, that was viewed more favorably than 3 individuals not properly wearing masks in close proximity to each other.
- Number of locations visited. We instructed staff to visit at least 5 locations, but many visited more than 5. For example, if we visited 10 locations and saw 5 non-compliant individuals, that was viewed more favorably than visiting 5 locations and observing 5 non-compliant individuals.

**Significant Observations**

Below are our staff's most significant observations from our visits focusing on face covering and physical distancing compliance, as well as from our staff during our other routine monitoring activities:

- **Kern Valley State Prison (January 12, 2021):** The OIG observed custody staff escorting five incarcerated persons from their housing unit to the program office. None of the incarcerated persons were wearing a face covering of any kind. Upon observing this, the lieutenant, who was walking with the OIG staff member, stopped the officers escorting the incarcerated person and ordered the incarcerated persons to don face coverings. The officers escorting the incarcerated persons never ensured they were in compliance with face covering requirements prior to escorting them.
- **California Correctional Institution (January 13, 2021):** In two separate dorms, OIG staff observed at least eight incarcerated persons who were not wearing face coverings.
- **California State Prison, Solano (January 14, 2021):** The OIG observed the issues listed below during our January 14 visit. This visit occurred just nine days after another OIG visit, during which we observed multiple similar instances of non-compliance, and reported those observations to the prison's warden. In addition, we reported about those non-compliance issues in our previous report on January 13. Considering our prior communications to the department and the prison's warden, it is concerning that we observed continued non-compliance.
  - OIG staff observed the prison's culinary staff and incarcerated culinary workers wearing their masks incorrectly. Specifically, we observed one incarcerated person wearing an N95 mask on his forehead, a few individuals had the bottom strap of the N95 dangling in front of their throat, and many had their N95s lowered, covering only their mouths.
  - The warden informed the OIG that Solano already identified the problem in culinary and conducted their own "surprise inspection" prior to the OIG's visit. However, the non-compliance remained when we visited that area of the institution.

- In one housing unit dayroom, OIG staff observed multiple incarcerated persons either failing to wear masks at all or wearing masks incorrectly. In total, we observed more than 10 non-compliant incarcerated persons.

### Review of Disciplinary Actions

Related to the department's face covering and physical distancing requirements, we requested and received copies of disciplinary actions taken by the department's prisons and youth facilities against staff, as well as corrective actions and rules violation reports issued by prisons to incarcerated persons from **December 30, 2020, through January 12, 2021**. The actions are summarized below by facility and type of action:

Prison	STAFF					INCARCERATED POPULATION	
	Verbal Counseling	Written Counseling	Letters of Instruction	Referrals for Investigation or Punitive Action	Punitive Actions	Corrective Counseling	Rules Violation Reports
Avenal State Prison	1	1	0	0	0	4	0
California City Correctional Facility	3	1	1	0	0	0	0
California Correctional Center	2	0	1	0	0	0	0
California Correctional Institution	1	2	0	0	0	2	0
California Health Care Facility	1	2	0	0	0	0	0
California Institution for Men	0	1	0	0	0	3	0
California Institution for Women	0	3	0	0	0	1	0
California Medical Facility	17	1	0	0	0	0	2
California Men's Colony	4	0	0	0	0	0	0
California Rehabilitation Center	0	0	0	0	0	0	2
California State Prison, Corcoran	10	0	0	0	0	0	0
California State Prison, Los Angeles County	8	0	0	0	0	1	1
California State Prison, Sacramento	2	0	4	0	0	3	0
California State Prison, Solano	0	0	0	0	0	0	0
California Substance Abuse Treatment Facility and State Prison, Corcoran	2	0	0	0	0	10	0
Calipatria State Prison	0	0	0	0	0	0	1
California State Prison, Centinela	4	0	0	0	0	0	0
Central California Women's Facility	0	0	0	0	0	0	1
Chuckawalla Valley State Prison	2	0	0	0	0	0	0
Correctional Training Facility	2	0	0	0	0	0	0
Deuel Vocational Institution	2	0	0	0	0	0	0
Folsom State Prison	4	0	0	0	0	0	0
High Desert State Prison	2	0	2	0	0	0	1
Ironwood State Prison	0	0	1	0	0	0	0
Kern Valley State Prison	2	0	0	0	0	0	0
Mule Creek State Prison	4	2	0	0	0	0	0
North Kern State Prison	1	0	0	0	0	0	0
Pelican Bay State Prison	0	1	0	0	0	0	1
Pleasant Valley State Prison	1	0	0	0	0	0	0

Prison	STAFF					INCARCERATED POPULATION	
	Verbal Counseling	Written Counseling	Letters of Instruction	Referrals for Investigation or Punitive Action	Punitive Actions	Corrective Counseling	Rules Violation Reports
Richard J. Donovan Correctional Facility	0	0	0	0	0	0	0
Salinas Valley State Prison	0	2	0	0	0	0	0
San Quentin State Prison	5	0	0	0	0	0	0
Sierra Conservation Center	5	1	0	0	0	15	1
Valley State Prison	0	1	0	0	0	0	0
Wasco State Prison	0	0	0	0	0	0	0
<b>Adult Facility Totals</b>	<b>85</b>	<b>18</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>39</b>	<b>10</b>
N.A. Chaderjian Youth Correctional Facility	0	0	0	0	0	54	3
O.H. Close Youth Correctional Facility	0	0	0	0	0	14	1
Pine Grove Youth Conservation Camp	0	0	0	0	0	0	0
Ventura Youth Correctional Facility	0	0	0	0	0	3	13
<b>Juvenile Facility Totals</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>71</b>	<b>17</b>

#### Self-Monitoring Documentation (Non-Compliance Tracking Logs)

On October 27, 2020, the department issued directives that regional health care executives and associate directors, or their designees, must conduct visits to observe compliance with face coverings and physical distancing within 30 days, and on a 120-day interval thereafter. In our January 13, 2021, report we analyzed the department's compliance with these directives through the initial 30-day deadline and noted that six facilities provided incorrect compliance monitoring checklists, while one failed to provide any documentation of compliance at all. Because the department is not required to report compliance with the directives until March 26, 2021, or 120 days from the initial 30-day deadline, we will report our analysis of the department's efforts in our final report.