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*Attorneys for Receiver*  
J. Clark Kelso

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

MARCIANO PLATA, et al.,

*Plaintiffs,*

v.

GAVIN NEWSON, et al.,

*Defendants.*

Case No. 01-cv-01351 JST

**RECEIVER'S SUBMISSION OF  
PROPOSED TIMELINE FOR SETTING  
ASIDE ISOLATION AND QUARANTINE  
SPACE AT REMAINING PRISONS IN  
RESPONSE TO COURT'S SEPTEMBER  
10, 2020 ORDER**

On September 10, 2020, this Court entered an Order Granting In Part And Denying In Part Defendants' Request For Extension Of Time Re: Isolation And Quarantine Space. ECF No. 3442. The Court had originally ordered that isolation and quarantine space be ready for occupancy at all prisons by September 2, 2020. ECF No. 3401. Defendants requested an extension of time to September 25, 2020 at ten prisons, and to October 31, 2020 at three prisons. ECF No. 3439. Because the parties' submissions in support of and in opposition to the request for an extension of time did "not contain enough information for the Court to make an informed decision setting a firm deadline for Defendants' compliance with the Court's prior order," the Court directed "the Receiver to meet and confer with the parties, and to include public health experts as appropriate, to identify an expedited timeline for preparing all identified isolation and quarantine space for occupancy. If the parties can reach agreement, they shall file a stipulation and proposed order by

September 16, 2020. If the parties cannot reach agreement, then the Receiver shall file his proposed timeline by the same date and attach the parties' objections and counter-proposals for the Court's consideration." ECF No. 3442 at 2.

On September 10, 2020, following issuance of the Court's order, the parties, counsel and the Receiver met and conferred with respect to the timeline for completing the set aside of isolation and quarantine space at remaining institutions. After some discussion, Defendants indicated they needed additional time to develop a proposed timeline and agreed to submit the proposed timeline to Plaintiffs and the Receiver by Tuesday, September 15, 2020. Declaration of Martin H. Dodd ("Dodd Decl."), filed herewith, ¶2. The parties then scheduled a further meet and confer session for 11:00 a.m. on September 15, 2020.

On September 15, prior to the meet and confer session, Defendants submitted their proposed timeline by email from Damon McClain, counsel for Defendants. His email stated:

CDCR has completed the necessary transfers for eight of the thirteen prisons it originally identified. For the remaining five prisons, CDCR believes it can complete the transfers within the following date ranges:

- ASP September 18-22;
- CVSP September 24-28;
- VSP September 24-28;
- LAC October 9-13;
- CMF October 9-13.

Of course, if CDCR can complete these transfers sooner it will do so.

Exhibit 1 to Dodd Decl., p. 3.

The parties and the Receiver then met and conferred to discuss the proposed timeline and Plaintiffs requested time to consider it. Plaintiffs thereafter responded that they lacked sufficient information fully to evaluate or to agree to Defendants' proposal and therefore proposed "two alternatives. First, if tents are available for isolation and quarantine for the five remaining prisons during the period before the transfers are complete, we will agree to the timelines proposed below. Second, if that is not acceptable to CDCR we request, pursuant to the Court's September 10, 2020 Order, that the Receiver propose a timeline." *Id.*, p. 2. After some further discussion between the parties regarding what Plaintiffs meant by the tents being "available," Defendants responded that "[t]here is not currently a need for tents at these five prisons, and if

1 the need arises, CDCR can quickly have them installed. Given the short period before the  
 2 transfers at the remaining five prisons will be completed, it simply does not make sense to install  
 3 tents now. . . . The [previously proposed] timeline, therefore, remains Defendants' proposal.  
 4 Because Plaintiffs are not satisfied with that timeline, it appears no agreement will be reached.  
 5 That being the case, the Court's order (ECF No. 3442) appears to require the Receiver to file a  
 6 proposed timeline." *Id.*, pp. 1-2.<sup>1</sup>

7 Since the parties are at impasse, and as required by this Court's order, the Receiver  
 8 proposes that the Court adopt Defendants' timeline for making isolation and quarantine space  
 9 available at the remaining five prisons, *i.e.*, (1) ASP by September 18-22, 2020; (2) CVSP by  
 10 September 24-28; (3) VSP by September 24-28; (4) LAC by October 9-13; and (5) CMF by  
 11 October 9-13. The Receiver emphasizes, however, that if additional space appears to be needed  
 12 at any of these institutions in the interim, tents can and will be installed at such institutions  
 13 within 72 hours as required by CDCR's existing contract for the provision of tents.

14  
 15 Dated: September 16, 2020

FUTTERMAN DUPREE DODD  
 CROLEY MAIER LLP

17 By: /s/ Martin H. Dodd  
 18 Martin H. Dodd  
 Attorneys for Receiver J. Clark Kelso

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 28 <sup>1</sup> Plaintiffs' counsel followed up with some additional questions about the number of patients on quarantine at three  
 of the five prisons and whether tents should be installed at those prisons. See Exhibit 2 to Dodd Decl.

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

MARCIANO PLATA, et al.,

*Plaintiffs,*

v.

GAVIN NEWSON, et al.,

*Defendants.*

Case No. 01-cv-01351 JST

**DECLARATION OF MARTIN H. DODD  
IN SUPPORT OF RECEIVER'S  
SUBMISSION OF PROPOSED  
TIMELINE FOR SETTING ASIDE  
ISOLATION AND QUARANTINE  
SPACE AT REMAINING PRISONS IN  
RESPONSE TO COURT'S SEPTEMBER  
10, 2020 ORDER**

I, Martin H. Dodd, declare as follows:

1. I am an attorney licensed to practice before all the courts of the State of California and before this Court and a partner in the law firm of Futterman Dupree Dodd Croley Maier LLP, attorneys for Receiver J. Clark Kelso ("Receiver") in this matter. The facts set forth herein are based on my personal knowledge and if called as a witness I could competently testify thereto.
2. On September 10, 2020, following issuance of this Court's order, I participated in a telephonic meet and confer session that included representatives of the parties, counsel and

the Receiver. We discussed the timeline for completing the set aside of isolation and quarantine space at remaining institutions. After some discussion, Defendants indicated they needed additional time to develop a proposed timeline and agreed to submit the proposed timeline to Plaintiffs and the Receiver by Tuesday, September 15, 2020. The parties then scheduled a further meet and confer session for 11:00 a.m. on September 15, 2020.

3. On September 15, prior to the meet and confer session, Defendants submitted their proposed timeline by email from Damon McClain, counsel for Defendants. A true and correct copy of the email exchange between counsel for Plaintiffs and Defendants is attached hereto as Exhibit 1. Defendants' proposal, as conveyed by Mr. McClain, is as follows:

CDCR has completed the necessary transfers for eight of the thirteen prisons it originally identified. For the remaining five prisons, CDCR believes it can complete the transfers within the following date ranges:

- ASP September 18-22;
- CVSP September 24-28;
- VSP September 24-28;
- LAC October 9-13;
- CMF October 9-13.

Of course, if CDCR can complete these transfers sooner it will do so.

Exh. 1, p. 3.

4. Thereafter, I participated in a further meet and confer session attended by counsel, as well as by representatives of the parties and the Receiver's office. Plaintiffs' counsel requested time to consider the proposal made earlier that morning by Defendants. Later on September 15, Plaintiffs' counsel responded by email that they lacked sufficient information fully to evaluate or to agree to Defendants' proposal and therefore proposed "two alternatives. First, if tents are available for isolation and quarantine for the five remaining prisons during the period before the transfers are complete, we will agree to the timelines proposed below. Second, if that is not acceptable to CDCR we request, pursuant to the Court's September 10, 2020 Order, that the Receiver propose a timeline."

Exh. 1, p. 2.

5. After some further discussion via email between counsel regarding what Plaintiffs'

counsel meant by the tents being “available,” Defendants’ counsel responded that “[t]here is not currently a need for tents at these five prisons, and if the need arises, CDCR can quickly have them installed. Given the short period before the transfers at the remaining five prisons will be completed, it simply does not make sense to install tents now. . . .

The [previously proposed] timeline, therefore, remains Defendants’ proposal. Because Plaintiffs are not satisfied with that timeline, it appears no agreement will be reached.

That being the case, the Court’s order (ECF No. 3442) appears to require the Receiver to file a proposed timeline.” Exh. 1, pp. 1-2. Attached hereto as Exhibit 2 is a true and correct copy of a further email, dated September 15, 2020, from Plaintiffs’ counsel to Defendants’ counsel regarding the number of people on quarantine at three of the five prisons at issue and whether tents should be installed at those prisons.

6. Since the parties are at impasse, and as required by this Court’s order, the Receiver instructed me to notify this Court that he proposes that the Court adopt Defendants’ timeline for making isolation and quarantine space available at the remaining five prisons, *i.e.*, (1) ASP by September 18-22, 2020; (2) CVSP by September 24-28; (3) VSP by September 24-28; (4) LAC by October 9-13; and (5) CMF by October 9-13. The Receiver emphasized, however, that if additional space appears to be needed at any of these institutions in the interim, tents can and will be installed at such institutions within 72 hours as required by CDCR’s existing contract for the provision of tents.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: September 16, 2020

FUTTERMAN DUPREE DODD  
CROLEY MAIER LLP

By: /s/ Martin H. Dodd  
Martin H. Dodd  
Attorneys for Receiver J. Clark Kelso

# **EXHIBIT 1**



## Martin Dodd

---

**From:** Damon McClain <Damon.McClain@doj.ca.gov>  
**Sent:** Tuesday, September 15, 2020 4:35 PM  
**To:** Don Specter; Alison Hardy; Steven Fama; Sophie Hart; Sara Norman; Rana Anabtawi; Vincent.Cullen@cdcr.ca.gov; Kelso, Clark@CDCR; Richard.Kirkland@cdcr.ca.gov; Barrow, Roscoe@CDCR; Martin Dodd  
**Cc:** Paul B. Mello; Samantha Wolff; Ryan Gille; Iram Hasan; John Walters; Gipson, Connie@CDCR; Stafford, Carrie C.@CDCR; Neill, Jennifer@CDCR  
**Subject:** RE: Isolation/Quarantine Call

Hi Don,

There is not currently a need for tents at these five prisons, and if the need arises, CDCR can quickly have them installed. Given the short period before the transfers at the remaining five prisons will be completed, it simply does not make sense to install tents now.

The actual dispute the court ordered us to meet and confer about, however, concerned timelines for transfers, not tents. As Defendants explained on the call today, through extraordinary efforts, they have already completed the transfers at eight of the thirteen prisons that required transfers. We hope this demonstrates that CDCR is completing these transfers as quickly as safety will allow. Additionally, CDCR has advanced the transfer timelines at the remaining five prisons as much as is possible without compromising the appropriate placement of the transferees, and without jeopardizing the health and safety of inmates and staff. The below timeline, therefore, remains Defendants' proposal. Because Plaintiffs are not satisfied with that timeline, it appears no agreement will be reached. That being the case, the Court's order (ECF No. 3442) appears to require the Receiver to file a proposed timeline.

-Damon

**From:** Don Specter <dspecter@prisonlaw.com>  
**Sent:** Tuesday, September 15, 2020 3:11 PM  
**To:** Damon McClain <Damon.McClain@doj.ca.gov>; Alison Hardy <ahardy@prisonlaw.com>; Steven Fama <sfama@prisonlaw.com>; Sophie Hart <sophiehart@prisonlaw.com>; Sara Norman <snorman@prisonlaw.com>; Rana Anabtawi <rana@prisonlaw.com>; Vincent.Cullen@cdcr.ca.gov; Kelso, Clark@CDCR <Clark.Kelso@cdcr.ca.gov>; Richard.Kirkland@cdcr.ca.gov; Barrow, Roscoe@CDCR <Roscoe.Barrow@cdcr.ca.gov>; Martin Dodd <MDodd@fddcm.com>  
**Cc:** Paul B. Mello <Pmello@hansonbridgett.com>; Samantha Wolff <SWolff@hansonbridgett.com>; Ryan Gille <Ryan.Gille@doj.ca.gov>; Iram Hasan <Iram.Hasan@doj.ca.gov>; John Walters <John.Walters@doj.ca.gov>; Gipson, Connie@CDCR <Connie.Gipson@cdcr.ca.gov>; Stafford, Carrie C.@CDCR <Carrie.Stafford@cdcr.ca.gov>; Neill, Jennifer@CDCR <Jennifer.Neill@cdcr.ca.gov>  
**Subject:** RE: Isolation/Quarantine Call

Hi Damon

"Available" means that any prison with an outbreak (defined as 3 or more positive cases) has to have sufficient number of quarantine beds vacant, which may include tents.

Don



**From:** Damon McClain <[Damon.McClain@doj.ca.gov](mailto:Damon.McClain@doj.ca.gov)>

**Sent:** Tuesday, September 15, 2020 2:31 PM

**To:** Don Specter <[dspecter@prisonlaw.com](mailto:dspecter@prisonlaw.com)>; Alison Hardy <[ahardy@prisonlaw.com](mailto:ahardy@prisonlaw.com)>; Steven Fama <[sfama@prisonlaw.com](mailto:sfama@prisonlaw.com)>; Sophie Hart <[sophiehart@prisonlaw.com](mailto:sophiehart@prisonlaw.com)>; Sara Norman <[snorman@prisonlaw.com](mailto:snorman@prisonlaw.com)>; Rana Anabtawi <[rana@prisonlaw.com](mailto:rana@prisonlaw.com)>; Vincent.Cullen@cdcr.ca.gov; Kelso, Clark@CDCR <[Clark.Kelso@cdcr.ca.gov](mailto:Clark.Kelso@cdcr.ca.gov)>; Richard.Kirkland@cdcr.ca.gov; Barrow, Roscoe@CDCR <[Roscoe.Barrow@cdcr.ca.gov](mailto:Roscoe.Barrow@cdcr.ca.gov)>; Martin Dodd <[MDodd@fddcm.com](mailto:MDodd@fddcm.com)>

**Cc:** Paul B. Mello <[Pmello@hansonbridgett.com](mailto:Pmello@hansonbridgett.com)>; Samantha Wolff <[SWolff@hansonbridgett.com](mailto:SWolff@hansonbridgett.com)>; Ryan Gille <[Ryan.Gille@doj.ca.gov](mailto:Ryan.Gille@doj.ca.gov)>; Iram Hasan <[Iram.Hasan@doj.ca.gov](mailto:Iram.Hasan@doj.ca.gov)>; John Walters <[John.Walters@doj.ca.gov](mailto:John.Walters@doj.ca.gov)>; Gipson, Connie@CDCR (<[Connie.Gipson@cdcr.ca.gov](mailto:Connie.Gipson@cdcr.ca.gov)>) <[Connie.Gipson@cdcr.ca.gov](mailto:Connie.Gipson@cdcr.ca.gov)>; Stafford, Carrie C.@CDCR <[Carrie.Stafford@cdcr.ca.gov](mailto:Carrie.Stafford@cdcr.ca.gov)>; Neill, Jennifer@CDCR <[Jennifer.Neill@cdcr.ca.gov](mailto:Jennifer.Neill@cdcr.ca.gov)>

**Subject:** RE: Isolation/Quarantine Call

Hi Don,

One question about your below tent proposal—by “available,” do you mean ready for installation within 72 hours? As you know, CDCR has a contract with a tent vendor who can install tents within 72 hours. Thank you.

-Damon

**From:** Don Specter <[dspecter@prisonlaw.com](mailto:dspecter@prisonlaw.com)>

**Sent:** Tuesday, September 15, 2020 12:02 PM

**To:** Damon McClain <[Damon.McClain@doj.ca.gov](mailto:Damon.McClain@doj.ca.gov)>; Alison Hardy <[ahardy@prisonlaw.com](mailto:ahardy@prisonlaw.com)>; Steven Fama <[sfama@prisonlaw.com](mailto:sfama@prisonlaw.com)>; Sophie Hart <[sophiehart@prisonlaw.com](mailto:sophiehart@prisonlaw.com)>; Sara Norman <[snorman@prisonlaw.com](mailto:snorman@prisonlaw.com)>; Rana Anabtawi <[rana@prisonlaw.com](mailto:rana@prisonlaw.com)>; Vincent.Cullen@cdcr.ca.gov; Kelso, Clark@CDCR <[Clark.Kelso@cdcr.ca.gov](mailto:Clark.Kelso@cdcr.ca.gov)>; Richard.Kirkland@cdcr.ca.gov; Barrow, Roscoe@CDCR <[Roscoe.Barrow@cdcr.ca.gov](mailto:Roscoe.Barrow@cdcr.ca.gov)>; Martin Dodd <[MDodd@fddcm.com](mailto:MDodd@fddcm.com)>

**Cc:** Paul B. Mello <[Pmello@hansonbridgett.com](mailto:Pmello@hansonbridgett.com)>; Samantha Wolff <[SWolff@hansonbridgett.com](mailto:SWolff@hansonbridgett.com)>; Ryan Gille <[Ryan.Gille@doj.ca.gov](mailto:Ryan.Gille@doj.ca.gov)>; Iram Hasan <[Iram.Hasan@doj.ca.gov](mailto:Iram.Hasan@doj.ca.gov)>; John Walters <[John.Walters@doj.ca.gov](mailto:John.Walters@doj.ca.gov)>

**Subject:** RE: Isolation/Quarantine Call

Thanks to Connie for providing information on the call this morning, and for all the work involved in ensuring that those transfers take place expeditiously and safely. It gave us a better sense of the task at hand. As Connie mentioned there are numerous variables that control whether a single person can be transferred safely and there are hundreds of potential people who may need to be considered for transfer. We currently do not have enough information to make an informed decision. And we cannot conduct sufficient discovery by tomorrow to accurately determine whether the CDCR's proposed timeline for transfers is appropriate. Therefore, we propose two alternatives. First, if tents are available for isolation and quarantine for the five remaining prisons during the period before the transfers are complete, we will agree to the timelines proposed below. Second, if that is not acceptable to CDCR we request, pursuant to the Court's September 10, 2020 Order, that the Receiver propose a timeline.

We are available to discuss both proposals if need be. We look forward to hearing from CDCR whether the first alternative is acceptable.

Don

**From:** Damon McClain <[Damon.McClain@doj.ca.gov](mailto:Damon.McClain@doj.ca.gov)>

**Sent:** Tuesday, September 15, 2020 10:38 AM

**To:** [dspecter@prisonlaw.com](mailto:dspecter@prisonlaw.com); Alison Hardy <[ahardy@prisonlaw.com](mailto:ahardy@prisonlaw.com)>; Steven Fama <[sfama@prisonlaw.com](mailto:sfama@prisonlaw.com)>; Sophie Hart <[sophieh@prisonlaw.com](mailto:sophieh@prisonlaw.com)>; Sara Norman (<[snorman@prisonlaw.com](mailto:snorman@prisonlaw.com)> <[snorman@prisonlaw.com](mailto:snorman@prisonlaw.com)>; Rana Anabtawi <[rana@prisonlaw.com](mailto:rana@prisonlaw.com)>; Vincent.Cullen@cdcr.ca.gov; Kelso, Clark@CDCR <[Clark.Kelso@cdcr.ca.gov](mailto:Clark.Kelso@cdcr.ca.gov)>; Richard.Kirkland@cdcr.ca.gov; Barrow, Roscoe@CDCR <[Roscoe.Barrow@cdcr.ca.gov](mailto:Roscoe.Barrow@cdcr.ca.gov)>; Martin Dodd <[MDodd@fddcm.com](mailto:MDodd@fddcm.com)>

**Cc:** Paul B. Mello <[Pmello@hansonbridgett.com](mailto:Pmello@hansonbridgett.com)>; Samantha Wolff <[SWolff@hansonbridgett.com](mailto:SWolff@hansonbridgett.com)>; Ryan Gille <[Ryan.Gille@doj.ca.gov](mailto:Ryan.Gille@doj.ca.gov)>; Iram Hasan <[Iram.Hasan@doj.ca.gov](mailto:Iram.Hasan@doj.ca.gov)>; John Walters <[John.Walters@doj.ca.gov](mailto:John.Walters@doj.ca.gov)>

**Subject:** Isolation/Quarantine Call

Good morning everyone,

This is to provide you with some revised transfer information in advance of the 11:00 call and provide you with Defendants' position on the timing of the remaining transfers. CDCR has completed the necessary transfers for eight of the thirteen prisons it originally identified. For the remaining five prisons, CDCR believes it can complete the transfers within the following date ranges:

- ASP September 18-22;
- CVSP September 24-28;
- VSP September 24-28;
- LAC October 9-13;
- CMF October 9-13.

Of course, if CDCR can complete these transfers sooner it will do so. We look forward to talking at 11:00.

-Damon

**Damon G. McClain**  
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**455 Golden Gate Avenue, Suite 11000**  
**San Francisco, CA 94102-7004**  
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## **EXHIBIT 2**



**Martin Dodd**

---

**From:** Alison Hardy <ahardy@prisonlaw.com>  
**Sent:** Tuesday, September 15, 2020 7:41 PM  
**To:** Damon McClain  
**Cc:** Don Specter; Steven Fama; Sophie Hart; Sara Norman; Rana Anabtawi; Vincent.Cullen@cdcr.ca.gov; Kelso, Clark@CDCR; Richard.Kirkland@cdcr.ca.gov; Barrow, Roscoe@CDCR; Martin Dodd; Paul B. Mello; Samantha Wolff; Ryan Gille; Iram Hasan; John Walters; Gipson, Connie@CDCR; Stafford, Carrie C.@CDCR; Neill, Jennifer@CDCR  
**Subject:** Re: Isolation/Quarantine Call

Hi Damon,

Thanks for your response. As Don indicated, we don't have enough information to evaluate the necessity for an extension. What we do know raises some concerns, though. Based on the data on the COVID data tracker, it appears that at two of the five prisons for which defendants' seek an extension, ASP and VSP, the number of active COVID cases currently substantially exceeds the number of reserved beds that have been vacated (ASP – 345 cases w/ 191 dorm beds available; VSP – 123 cases w/ 88 cell beds available.) CVSP has 143 cases, with 192 beds available. Since all three prisons likely also have a substantial number of people who are on quarantine for which they require separate housing, we question why tents are not necessary to respond to the outbreaks in the short term. Can you provide the number of people on quarantine currently at each of the three prisons, and where they are currently housed?

Thanks,  
Alison

On Tue, Sep 15, 2020 at 4:35 PM Damon McClain <[Damon.McClain@doj.ca.gov](mailto:Damon.McClain@doj.ca.gov)> wrote:

Hi Don,

There is not currently a need for tents at these five prisons, and if the need arises, CDCR can quickly have them installed. Given the short period before the transfers at the remaining five prisons will be completed, it simply does not make sense to install tents now.

The actual dispute the court ordered us to meet and confer about, however, concerned timelines for transfers, not tents. As Defendants explained on the call today, through extraordinary efforts, they have already completed the transfers at eight of the thirteen prisons that required transfers. We hope this demonstrates that CDCR is completing these transfers as quickly as safety will allow. Additionally, CDCR has advanced the transfer timelines at the remaining five prisons as much as is possible without compromising the appropriate placement of the transferees, and without jeopardizing the health and safety of inmates and staff. The below timeline, therefore, remains Defendants' proposal. Because Plaintiffs are not satisfied with that timeline, it appears no agreement will be reached. That being the case, the Court's order (ECF No. 3442) appears to require the Receiver to file a proposed timeline.

-Damon