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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

RALPH COLEMAN, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

2:90-cv-00520 KJM-DB (PC)

REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANTS' STRATEGIC COVID-19 MANAGEMENT PLAN

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INTRODUCTION

Defendants, like the rest of the world's leaders and public officials, are working around the clock to keep people safe from an unprecedented and unpredictable pandemic that has no horizon. Defendants have worked closely with the federal Receiver appointed under the *Plata* Court — who oversees healthcare in the California Department of Corrections and Rehabilitation's (CDCR) 35 institutions—to prevent and slow the spread of COVID-19. CDCR has quickly implemented extensive, thoughtful, and unprecedented measures in response to a rapidly-fluctuating and novel pandemic, including nearly all of the Centers for Disease Control and Prevention's (CDC) recommended measures for correctional facilities, many of which were implemented before the CDC's recommendations were even released. On April 10, 2020, the Court ordered Defendants to submit their COVID-19 strategic plan. (ECF No. 6600.) Defendants met that mandate, filing a plan with nearly three hundred pages of supporting materials demonstrating Defendants' comprehensive, proactive, and ongoing efforts addressing the emergency crisis.

After repeatedly attempting to impede and micromanage Defendants' crisis response in three separate federal courts, Plaintiffs now object to Defendants' efforts. Plaintiffs devote significant attention to the concept of social distancing guidance, allege that Defendants were not diligent enough in preparing for COVID-19 within institutions, and take issue with a perceived shortage of personal protective equipment, largely based on unsourced "anecdotal reports." (ECF No. 6626.) What Plaintiffs' objections do *not* focus on, however, is telling—Plaintiffs make no allegation that Defendants' COVID-19 plan fails to address *Coleman* class members' members' interests or the provision of mental health care. Instead, Plaintiffs' objections read more like a motion for reconsideration of the recent order in *Plata v. Newsom*, N.D. Cal. No. 4:01-cv-01351-JST (April 17, 2020), denying their emergency motion. But this is not the *Plata* court, and Plaintiffs' criticisms of CDCR's strategic plan focus on broader health concerns impacting all CDCR inmates with no focus on issues with specific relevance to the *Coleman* class or the provision of mental health care. Plaintiffs failed to obtain a prison release order before the Three-Judge Panel (ECF No. 6574) and failed to obtain an order requiring Defendants to develop a plan

to manage and prevent the further spread of COVID-19 in *Plata* (*Plata*, ECF No. 3291). Plaintiffs are thus precluded from seeking the same relief in this forum to obtain a different and conflicting result.

Plaintiffs' objections lack merit and the Court should reject them so that Defendants can continue to act responsibly in real time to address the pandemic. First, contrary to Plaintiffs' objections, Defendants' plan has a clear objective—the preservation of health and safety—and, with the newly added dormitory transfer plan set forth in *Plata* on Monday, has a timeline for effecting greater physical distancing. CDCR's response to the global pandemic has been thus far reasonable and certainly does not violate the Eighth Amendment.

Second, while Plaintiffs appear to be laying the groundwork for yet another meritless population reduction motion, Defendants have been diligently working with the federal Receiver to ensure the safety of all inmates under their care, including *Coleman* class members, during this unprecedented pandemic. As Defendants have noted on several occasions, the plans provided to this Court are subject to review and amendment based on daily changing circumstances and new information. Indeed, the plan submitted on Thursday has already been changed in several important ways, as set forth below. Finally, as the *Plata* court found last week, Defendants have not been deliberately indifferent to the emergent health crisis they now face. Plaintiffs cannot re-litigate that claim here.

DISCUSSION

I. PLAINTIFFS' OBJECTIONS TO DEFENDANTS' COVID-19 PLAN ARE SQUARELY IN THE PROVINCE OF THE *PLATA* COURT.

A. Plaintiffs Cannot Forum-Shop and Re-Litigate Issues They Raised and Lost in *Plata*.

Plaintiffs' objections to Defendants' COVID-19 Strategic Plan amount to a rehashing of their emergency motion in *Plata*, rather than relating to any issue specific to the *Coleman* class. (*See Plata*, ECF No. 3266.) For example, Plaintiffs focus on the perceived inadequacy of Defendants' social distancing measures, predict dire consequences for Defendants' plan of action, and ask this Court to impose population reduction measures as the only "real" way to remedy the alleged deficiencies with Defendants' plan. (*Compare Plata*, ECF No. 3266 *with Coleman* ECF

No. 6626.) But the *Plata* court denied Plaintiffs' motion, describing in detail Defendants' response to the COVID-19 crisis and finding specifically that the response was not constitutionally deficient. (*See Plata* order, ECF No. 3291 at 14.) Because Plaintiffs have already had a "full and fair opportunity" to litigate their claims regarding Defendants' response to COVID-19, the doctrine of issue preclusion bars them from re-litigating those claims before this Court. *See Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 329 (1971).

Issue preclusion requires that: "(1) the issue sought to be litigated is sufficiently similar to the issue present in an earlier proceeding and sufficiently material in both actions to justify invoking the doctrine; (2) the issue was actually litigated in the first case; and (3) the issue was necessarily decided in the first case." *United States v. Weems*, 49 F.3d 528, 532 (9th Cir. 1995). Moreover, the person against whom issue preclusion is being asserted must have been "a party or in privity with a party in the previous action." *In re Palmer*, 207 F.3d 566, 568 (9th Cir. 2000). Each of these elements is certainly present here; in *Plata* and before this Court, Plaintiffs objected to Defendants' plan to manage COVID-19 within CDCR institutions, and the *Plata* court rejected those objections, stating explicitly that Defendants' response to the crisis has been reasonable. (*Plata*, ECF No. 3291.)

From a more pragmatic standpoint, Plaintiffs' objections to the plan do not highlight any perceived danger specific to the *Coleman* class or any concerns regarding the provision of mental health care. In fact, the phrase "mental health" only appears four times in the Plaintiffs' 16-page brief, and three of those instances are quotes from the Court's order or Defendants' plan itself. (ECF No. 6626 at 4, 8, 9.) Plaintiffs bring no new issue before this Court, nor could they—as Defendants' COVID-19 plan, which applies statewide to protect all inmates and staff, is already being addressed in *Plata*. Plaintiffs have failed to identify any unique or specific relief permissible in this case.

B. Plaintiffs' Objections Tread on the *Plata* Court's Order and Violate Judicial Comity.

The well-established doctrine of judicial comity permits one district to decline judgment on an issue that is properly before another district. *See Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 184–86 (1952). The purpose of the doctrine is to avoid rulings that may "trench upon the authority of sister courts." *West Gulf Mar. Ass'n v. ILA Deep Sea Local 24*, 751 F.2d 721, 728 (5th Cir. 1985). The doctrine is also designed to avoid placing unnecessary burden on the federal judiciary, and to avoid the confusion and embarrassment of conflicting judgments. *Church of Scientology of Cal. v. U.S. Dep't of Army*, 611 F.2d 738, 750 (9th Cir. 1979) (*overruled on other grounds by Animal Legal Defense Fund v. U.S. Food & Drug Administration*, 836 F.3d 987 (9th Cir. 2016); *see Feller v. Brock*, 802 F.2d 722, 727 (4th Cir. 1986) (holding that whenever possible, coordinator courts should avoid duplicating litigation or issuing conflicting orders).

In *Ord v. United States,* the plaintiff asked the district court to declare another court's order void and to enjoin the Securities and Exchange Commission from enforcing it. The Ninth Circuit found that the district court properly dismissed the plaintiff's action based on "considerations of comity and orderly administration of justice." *Ord*, 8 Fed. Appx. 852, 854 (9th Cir. 2001) (citing *Lapin v. Shulton, Inc.*, 333 F.2d 169, 172 (9th Cir. 1964)). The court found that "[w]hen a court entertains an independent action for relief from the final order of another court, it interferes with and usurps the power of the rendering court." *Id.* (citing *Treadaway v. Acad. of Motion Picture Arts & Sci.*, 783 F.2d 1418, 1422 (9th Cir. 1986)). Attempts to overturn another court's order should, in all but rare instances, yield to principles of judicial comity, fairness, and efficiency. *Id.*

Here, Judge Tigar has already ruled on Defendants' actions to manage COVID-19 within CDCR's institutions, finding "without difficulty that Defendants' response has been reasonable." (*Plata*, ECF No. 3291 at 14.) Plaintiffs all but invite this Court to overturn Judge Tigar's order finding Defendants' COVID-19 plan reasonable and constitutional. Because this issue has already been addressed in *Plata*, it would be more appropriate and efficient to continue any

further discussions of the general COVID-19 plan in the *Plata* court while addressing issues specific to the provision of mental health in this case.

C. The Secretary of CDCR Does Not Have Unilateral Authority to Transfer Inmates, Specifically in Connection with CDCR's COVID-19 Response.

Plaintiffs request that "Coleman class members or high risk inmates" be "target[ed] . . . for special movement or housing." (ECF No. 6626 at 8.) This request is problematic for at least two reasons. First, CDCR may only order general transfers of inmates in response to the COVID-19 pandemic in coordination with, and with the approval of, the Plata Receiver. (Plata, ECF No. 473 at 4.) Under the Plata order, the Receiver shall "exercise all powers vested by law in the Secretary of CDCR as they relate to the administration, control, management, operation, and financing of the California prison medical health care system." (Id.) And although some institutions' medical delivery has been delegated back to CDCR, the Receiver retains control of the administrative functions of CDCR's medical services and sets statewide medical policy. All matters concerning COVID-19-related inmate transfers and health care decisions fall under the full purview and authority of the Receiver in the Plata action. Defendants are collaborating with the Plata Receiver, Plaintiffs, and the Special Master to address issues related to all class members, of which Coleman class members are a subset being addressed through Plata. Any request made by this Court with respect to inmate movement or care requires approval by the Plata Receiver. The jurisdiction lies in the Plata court addressing this global pandemic. Thus, CDCR cannot enter into agreements regarding the provision of medical care to "high risk" patients or regarding physical-distancing measures for medical purposes without the approval of the Receiver. (Gipson Decl., ¶ 6.)

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Second, the Receiver has explicitly stated that inmates with higher risk factors for COVID-19 should *not* be housed together, as a single point of entry for the virus could result in an outbreak among all of them, with dire consequences. (Gipson Decl., Ex. A at 2.) Transferring elderly patients or those with medical risk factors to be housed together would essentially create a series of nursing home-like facilities within CDCR—the very scenario that Plaintiffs claim to be concerned about in their objections. Defendants acknowledge the greater risk of mortality and morbidity from inmates with additional risk factors, but the best way to protect them from COVID-19 is to adopt strategies that protect *all* inmates within CDCR, not to group them together in such a manner that a single infection could spread to all of them. The Court should reject Plaintiffs' efforts to usurp the *Plata* Receiver's well-established authority, particularly in this time of crisis.

II. PLAINTIFFS' OBJECTIONS TO DEFENDANTS' COVID-19 PLAN ARE UNFOUNDED.

A. As Guidance, Public Health Guidance Does Not Create a Static List of Requirements Defendants Must Meet to Comply with the Constitution.

Plaintiffs' objections to CDCR's comprehensive plan for responding to COVID-19 rely heavily on a few cherry-picked citations to Centers for Disease Control and Prevention (CDC) and California Department of Public Health's (CDPH) guidance. But broad generic guidelines from public agencies meant to set best practices for a wide range of other organizations with varying characteristics are not the criteria that establish whether a plan is constitutionally adequate.

As Defendants previously pointed out in their prior response to the Court's April 6, 2020 order, there is "no one-approach-fits-all answer" in determining the constitutional minima in

responding to an emergency – let alone a global pandemic. The Eighth Amendment requires Defendants take reasonable steps under the circumstances in responding to a serious risk of harm. *Farmer v. Brennan*, 511 U.S. 825, 844 (1994). In this case, the Court has recognized that Defendants' actions must be considered in context in determining whether they meet the constitutional minima, and requires balancing "common sense, and the clinical nature of the problem," with deference to prison administrators. *See Coleman v. Wilson*, 912 F.Supp. 1282, 1301 (1995). Expert-based standards are "helpful and relevant" to the Eighth Amendment analysis, but they do not set fixed constitutional benchmarks. *See Rhodes v. Chapman*, 452 U.S. 337, 348 n.13 (1981); *see also Hoptowit v. Ray*, 682 F.2d 1237, 1253-54 (9th Cir. 1982) (reversing injunction adopting American Medical Association standard because the district judge "failed to take into account the approach taken by the State").

The CDC itself recognizes that not all parts of its guidance will be possible or applicable to all prisons across the country and are to be considered "guiding principles." (*See, e.g.*, *CDC's Interim Guidance on Management of COVID-19 in Correctional and Detention Facilities*, available at https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf (last accessed Apr. 21, 2020).) Moreover, "[t]he guidance will not necessarily address every possible custodial setting" and recommendations are not differentiated based on "different facility types [] and sizes." *Id.* Accordingly, prison officials are encouraged to tailor their response based on "facilities' physical space, staffing, population, operations, and other resources and conditions." *Id.* And, the CDC envisions its guidance will change and be updated over time "as additional information becomes available." *Id.*

Similarly, the courts have followed the CDC's guidance and recognized that complete compliance may not be possible, and deviations from certain parts of CDC's guidance does not render a prison's response to the pandemic constitutionally deficient. As pointed out, the court in *Plata* considered the constitutionality of Defendants actions under the same plan now before this Court. There, plaintiffs acknowledged that Defendants' plan was largely consistent with the CDC and CDPH's guidance, but, similar to here, claimed Defendants lacked a plan to facilitate physical distancing. (*Plata*, ECF No. 3291 at 8.) The court disagreed, finding Defendants

implemented "several measures to promote increased physical distancing," and while "the Court might adopt additional distancing measures if it were solely responsible for prison health care," it could not "conclude Defendants' actions are constitutionally deficient." (*Id*.) In reaching its conclusion, the court recognized that CDC's guidance acknowledge that social distancing may not be possible in all situations. (*Id*. at 9.) And other courts have also been hesitant to find prison responses inadequate because they failed to meet the letter of CDC's requirements in one way or another. *See Mays v. Dart*, No. 20 C 2134, 2020 WL 1812381, at *10 (N.D. Ill. Apr. 9, 2020) (Sheriff's ongoing efforts to modify arrangement to create greater separation between inmates was not unreasonable even though it did not strictly adhere to CDCR guidance that recognized social distancing may not be possible); *Nellson v. Barnhart*, No. 20-cv-00756, 2020 WL 1890670, at *6 (D. Colo. Apr. 16, 2020) (lack of social distancing in the law library and communal restrooms did not establish deliberate indifference).

By focusing on whether CDCR's plan aligns perfectly with every part of the CDC's guidance, the Plaintiffs risk losing the forest through the trees. The inquiry is whether CDCR's comprehensive plan is a reasonable response to COVID-19, not whether it perfectly aligns with a few select generic guidelines.

B. CDCR's Plan Aligns with the Vast Majority of the CDC's General Guidance.

Plaintiffs argue that the Strategic Plan fails to "identify: (1) their objectives for housing *Coleman* class members who are not being granted early release from CDCR; (2) timelines for those objectives; and (3) a specific plan for housing medically vulnerable members of the Coleman class." (ECF No. 6626 at 4.) But Plaintiffs mischaracterize the contents of the Strategic Plan and the CDC Guidelines. CDCR's plan, nearly 300 pages in length, provides both the concrete steps and the dates those steps began, including the steps required to provide a safe living environment (housing) for all inmates, including *Coleman* class members. (ECF No. 6616, and 6616-1.) Specifically, the plan outlines a myriad of preventative measures to ensure safe housing for all inmates including "population management measures, mandatory modified programming, eliminating non-essential transfers,…transferring inmates out of dormitory

settings…and taking steps to enhance social distancing in communal areas." (ECF Nos. 6616 at pp. 9-12.) Additionally, the plan addresses steps to ensure staff do not bring COVID-19 into the institutions (ECF No. 6616 at 12), testing protocols to ensure prompt identification and quarantine of sick or exposed inmates (ECF No. 6616 at 13-14), and the use of proper protective equipment and hygiene protocols to prevent the spread of COVID-19 through inmate housing. (ECF No. 6616 at 14-15.) The plan also references the release of thousands of inmates, the suspension to intake of another several thousand inmates, and the steps taken to manage yard and groups to reduce the spread of COVID-19. (ECF No. 6616-1 at 9-10.)

CDCR's plan is not equivocal. Prior to the submission of the plan, CDCR had initiated transfers from dorms to increase physical distancing and reducing the population by releasing inmates under the accelerated release plan. (*Id.* at 6, 9.) As a result of these efforts, the vast majority of dorms in CDCR were able to accomplish appropriate physical distancing as recommended by the Receiver as of April 19, 2020. (*Plata*, ECF No. 3294 at 10-12.) Completion of these tasks were necessary to allow CDCR to assess what additional population moves were needed to comply with the Receiver's April 10, 2020 memorandum. Development of CDCR's April 20, 2020 dorm movement out of dorms began immediately following the completion of the initial dorm movements discussed in Defendants' plan (ECF No. 6616 at 11) and following the completion of the early releases. (ECF No. 6616 at 9.) As a result of the implementation of that plan, CDCR anticipates that all transfers necessary to accommodate physical distancing as recommended by the federal Receiver will be complete by April 29, 2020. (*See* COVID Compliance Transfer Schedule filed under seal at ECF No. 6631.)

Contrary to Plaintiffs' argument, CDCR's comprehensive plan contains policies, procedures, and guidelines that are responsive to most of the CDC's guidance. As CDCR's plan notes, "CDCR and CCHCS's plans and policies have been made with guidance from public health experts and with reference to the guidelines on the prevention of COVID-19 in correctional settings issued by the CDC." (ECF No. 6616 at 6.) And, it implemented plans that accounted for what ultimately became CDC's guidance before it issued the guidance on March 23, 2020. (*Id.*)

A fair reading of CDCR's plan and 28 attachments, including its table comparing its plan to the general principles in the CDC's guidance, shows that its plan is responsive to almost all of CDC's guidance. Plaintiffs' critiques are primarily aimed at two parts of the guidance: social distancing and the provision of PPE supplies. Those critiques miss the point. They ignore the overwhelming number of efforts CDCR undertakes in its plan to combat the spread of COVID-19, including the ongoing measures taken to provide sufficient PPE and social distancing. CDCR instituted additional cleaning procedures, made soap and hand sanitizer available, providing PPE for those who require it, provided education on the use of PPE, and is providing cloth masks to all inmates and staff. (ECF No. 6616 at 6,14-15; ECF No. 6616-1 at 43-44.) And, the *Plata* court already determined that the steps CDCR has taken and will take to provide for social distancing are constitutionally sufficient. (*Plata*, ECF No. 3291 at 8, 12)

It is important to note that, similar to CDCR's plan to protect all medically vulnerable inmates, including those who have a mental illness, the CDC's guidance does not single out inmates with mental illness as requiring special protection. The CDCR's guidance does not include mental illness as one of the medically vulnerable categories. And its guidance does not include specific recommendations on how mental health care should be provided to patients in prison during the COVID-19 outbreak beyond stating that it should continue to the extent possible. CDCR's comprehensive plan contains policies and strategies that are targeted to treating mental illness in the inmate population throughout the COVID-19 pandemic, including plans for providing care based on available resources, plans for providing care for different levels of acuity, and plans for how and when inmates are transferred. Plaintiffs raised no objections with those temporary policies.

C. Defendants Did Not Fail to Foresee and Plan for the Global Pandemic.

Plaintiffs claim that Defendants should have been aware of the risks posed by COVID-19 and started planning for its possible effects in CDCR's prisons in January 2020. The contention fails. They seek to impute a duty on Defendants to foresee and respond to a global pandemic before most other people in the United States did, including Plaintiffs' counsel. Indeed, the CDC, which the Court and Plaintiffs have relied on to great extent did not issue its guidance until March

23, 2020. (United States Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), Guidance for Correctional & Detention Facilities, available at https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (last accessed Apr. 22, 2020).) Defendants were in constant contact with Plaintiffs and the Special Master throughout January and February, and Defendants are not aware of an attempt by either to find out whether CDCR was beginning to plan for the possibility that COVID-19 might reach California and spread. Plaintiffs certainly do not point to any such attempt. And Plaintiffs' counsel, who are counsel in Plata, Clark, and Armstrong, continued to tour CDCR institutions in January, February and through much of March 2020, evidencing a lack of concern over the potential spread of COVID-19. Nonetheless, despite the relatively unknown nature of VOID-19's threat to CDCR in January 2020, CDCR did begin early assessments of the potential impact of the virus and soon started discussions with healthcare officials about it. (Gipson Decl. at ¶ 3.)

Plaintiffs' argument is a distraction from the purpose of the Court's order. Defendants' filed their comprehensive plan on April 16, 2020. At a status conference the following day, the Court granted Plaintiffs' request to file a response to the plan. (ECF No. 6622 at 2.) Accordingly, the focus should be on the sufficiency of Defendants' fifteen-page long comprehensive plan and twenty-eight attachments. (*See generally*, ECF No. 6616.) The Court should not be distracted by Plaintiffs attempt to litigate when Defendants might have guessed an infected person might reach our shores and pose a threat to incarcerated people in California.

In addition, Plaintiffs' argument that Defendants' did not file a comprehensive plan until a month after CDPH issued guidance for health systems is disingenuous. Plaintiffs are fully aware that Defendants were actively and aggressively implementing plans to respond to the COVID-19 pandemic during this time period. They were involved in numerous task force meetings with Defendants and the Special Master and negotiated the minute details of Defendants policies. (*See* ECF No. 6616 at 7.) As Defendants have consistently represented to the Court, the fact that their COVID-19 plans were not in one specific document does not mean that CDCR was not taking a comprehensive approach in responding to COVID-19. Defendants were addressing each part of

this crisis long before they filed their comprehensive plan and anticipate that, much like the rest of the world, their "plans to mitigate the spread of COVID-19 [will] continue to evolve as additional scientific and medical information becomes available." (*Id.*)[1]

D. The Strategic Plan Targets All Inmates in All Housing Units, Including the Medically Vulnerable and Patients Housed in Dormitories.

Plaintiffs' conclusion that the outbreaks of COVID-19 at the California Institution for Men (CIM) and CSP-Los Angeles County (LAC) are the result of poor planning is not based in reality and not supported by the statistics cited. First, there is no evidence of a causal connection between mental illness and COVID-19. Mental illness is not one of the risk factors identified by the CDC. (United States Centers For Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *People Who Are at Higher Risk for Severe Illness*, available at: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html (last accessed Apr. 22, 2020.) Second, the statistics show that there were outbreaks limited to discreet housing units that just happened to be limited, under mental health policies, to *Coleman* class members. This is not indicative that CDCR did not have a plan to address social distancing in those housing units. The COVID-19 outbreak at LAC is in an Enhanced Outpatient Program (EOP) *celled*-housing unit housing *Coleman* class members.[2] (Facility D is a Level IV EOP program, ECF No. 5779 at 31.) Over half of the *Coleman* class members who have tested positive for COVID-19 are housed in EOP housing units at LAC. This is not an indication of an overcrowded dorm or that CDCR has not done enough for *Coleman* class members. And, as the *Plata* court noted, "that a large percentage of confirmed cases are in a single housing unit is

[1] Plaintiffs attempt to analogize the entirety of CDCR to an acute care hospital in order to argue that CDCR should have acted on guidance provided for hospitals. It is accurate that CDCR does provide medical care at some of its facilities, but to claim that CDCR is tantamount to a hospital is not credible. Indeed, the CDC clearly saw the need to issue distinct guidance to for prisons and detention facilities rather than instructing them to follow existing guidance for health care facilities. Moreover, contrary to Plaintiffs' analogy, acute community hospitals could expect to see a surge in patients coming from all over the surrounding communities, including potentially from jails and prisons if the patients were too ill to be isolated and treated in-house. Prisons and jails would not be expected to become general care facilities for a surge of disease in the community.

[2] Enhanced Outpatient Programs are "characterized by a separate housing unit," meaning that EOP patients may only be housed with other EOP patients. (MHSDS Program Guide at 12-4-1.)

actually some evidence that Defendants' containment policies are having their intended effect." (*Plata* Order, ECF No. 3291 at 7-8.)

E. CDCR's COVID-19 Strategy Plan Is Comprehensive, as the Plata Court Found, and Is Consistent with or Exceeds Actions Taken by Other Correctional Systems Across the Country.

As the Court requested, CDCR showed how its strategic plan comports with the CDC's guidance, noting the instances in which CDCR's plan may deviate from that guidance. (Cite.) CDCR and California have been leaders in their response to COVID-19, and Defendants' comprehensive plan – provided to this Court and found to be constitutionally sufficient by the *Plata* court – reflects that leadership in this ongoing time of crisis. No one currently sees a "horizon" to this pandemic. Yet, this Court can credit the State's leadership as it manages the pandemic in real time consistent with or in ways that exceed steps taken by other correctional departments, in addition to steps not taken elsewhere.

Notwithstanding Plaintiffs' repeated attacks, CDCR is not on an island in its management of this unexpected, unprecedented, and unpredictable disease. For example, the Federal Bureau of Prison (BOP) – which has approximately 122 prisons and 143,803 inmates in the facilities it operates – issued a plan to combat coronavirus. (United States Federal Bureau of Prisons, *About Our Facilities*, available at https://www.bop.gov/about/facilities/federal_prisons.jsp (last visited Apr. 21, 2020); United States Federal Bureau of Prisons, *About Our Facilities, By the Numbers*, available at https://www.bop.gov/about/facilities/ (last visited Apr. 21, 2020).) Like CDCR's plan, the BOP has taken a phased approach, initiating and adjusting the particular pieces of its plans as needed. Presently, the BOP's plan is in phase six. (U.S. Dept. of Justice, Federal Bureau of Prisons, *Bureau of Prisons COVID-19 Action Plan: Phase Six*, available at https://www.bop.gov/resources/news/pdfs/20200414_press_release_action_plan_6.pdf (last accessed Apr. 21, 2020) (hereinafter Phase Six).) BOP's modified operations and protective measures include:

- suspended social visits, with a corresponding increase in inmate telephone system minutes;

- a general suspension on inmate movement except in certain limited circumstance subject to COVID-19 screening criteria, including, but not limited to medical or mental health transfers, and, if necessary, to manage bedspace;
- suspension of legal visitation, with possible case-by-case exceptions;
- suspension of official staff travel except for relocation;
- suspension of staff training;
- mandatory health screening for all contractors performing essential maintenance on essential systems, with all other contractor work suspended;
- suspension of volunteer visits, with some exceptions;
- enhanced health screening for staff;
- enhanced health screening and quarantine protocols for new inmates;
- tour suspensions, with limited exceptions; and
- modified operations to maximize social distancing "as much as practicable," including "consideration of staggered meal times and staggered recreation times."

(U.S. Dept. of Justice, Federal Bureau of Prisons, *BOP Implementing Modified Operations*, available at https://www.bop.gov/coronavirus/covid19_status.jsp (last accessed Apr. 21, 2020).)

In addition, BOP also implemented a plan to coordinate with the United States Marshals Service to decrease incoming movement, and significantly decrease internal inmate movement starting April 1, 2020. Specifically, BOP ordered inmates secured in their assigned cells or quarters for fourteen days, during which time the inmates would be provided access to programs and services such as mental health and education "to the extent practicable." (U.S. Dept. of Justice, Federal Bureau of Prisons, *COVID-19 Action Plan: Phase Five*, available at https://www.bop.gov/resources/news/20200331_covid19_action_plan_5.jsp (last accessed Apr. 21, 2020) (hereinafter Phase Five).) Phase Six extended all existing protective measures to May 18, 2020. (*See* Phase Six.)

The plan CDCR has been developing and implementing for months with Plaintiffs, the Special Master, and the *Plata* Receiver contains a version of all these actions, including specific policies, procedures, and plans to address the mental health needs of class members.

Significantly, the BOP recognizes, as does CDCR, that it must "revise and update its action plan in response to the fluid nature of the COVID-19 pandemic, and in response to the latest guidance from experts" including the World Health Organization and CDC. (*See* Phase Five.) And, just as the *Plata* court determined CDCR's response was constitutional, the district court in *Nellson v. Barnhart* determined it would not alter BOP's plan as it was implemented at one of its prisons. *See Nellson v. Barnhart et. al.*, No. 20-CV-00756, 2020 WL 1890670, at *6 (D. Colo. Apr. 16, 2020) (denying motion for preliminary injunction because Plaintiff failed to exhaust, defendants provided the relief requested, and BOP and United States Prison Florence were not deliberately indifferent because they took numerous steps to reduce the risk of transmission).

Correctional departments around the country are taking approaches that are similar to Defendants – if not always identical or as comprehensive as Defendants. (*See* Florida Department of Corrections, *FDC COVID-19 Action Items*, available at http://www.dc.state.fl.us/comm/covid-19.html#action (last visited Apr. 21, 2020) (Florida suspended visitation, implemented screening for all entrants, adjusted programming to comply with social distancing, staggered meals, and suspended non-critical transfers, but unlike California is still accepting new commitments); *see also* New York Department of Corrections and Community Supervision, *DOCCS COVID-19 Report, Preparedness and What DOCCS is Doing*, available at https://doccs.ny.gov/doccs-covid-19-report (last visited Apr. 21, 2020) (New York created a COVID-19 task force, mandated staff masking, allowed inmates to use handkerchiefs and masking isolated inmates, suspended intake from the counties, suspended external transfers unless exigent, suspended visitation, displayed COVID-19 information on posters, issued enhanced cleaning and disinfecting procedures, among other steps.) CDCR has demonstrated its leadership in attacking the deadly COVID-19 virus, and it will continue to do so. CDCR's plan mirrors or exceeds actions taken by other correctional systems, which shows the constitutional adequacy of the plan.

III. PLAINTIFFS' OBJECTIONS TO COVID-19 PLAN ARE PROCEDURALLY IMPROPER BECAUSE THEY REQUEST ADDITIONAL RELIEF RATHER THAN ADDRESSING THE COURT'S ORDER.

Plaintiffs criticize CDCR's COVID-19 Plan and request an order requiring "Defendants to identify concrete, measurable benchmarks, with dates certain for completion, to ensure they are prepared to address adequately the next institution-level and system-wide COVID-19 outbreaks that will occur in their system." (ECF No. 6626 at 15.) In addition to denying Plaintiffs' request on the merits, this Court should disregard Plaintiffs' request because it is an improperly noticed motion. Rule 7 of the Federal Rules of Civil Procedure provides that a request for a court order must be made by written motion unless made during a hearing or a trial. Rule 7 also requires that the motion state with particularity the grounds for seeking the order. Plaintiffs' objections do not meet the notice or substantive requirements of the Federal Rules of Civil Procedure and their requested relief should be denied.

IV. CDCR'S COVID-19 PLAN IS DYNAMIC, AS DEMONSTRATED BY RECENT ACTIONS APPROVED BY THE *PLATA* RECEIVER TO ACHIEVE GREATER PHYSICAL DISTANCING AMONG SMALL GROUPS OF INMATES THROUGH TRANSFERS.

Defendants have repeatedly stated that CDCR's COVID-19 strategic plan is not static and will evolve in response to the global pandemic. CDCR's position is consistent with the daily (if not hourly) decisions government officials are making worldwide in response to the pandemic. During an April 20 status conference in *Plata*, the State informed that court that the Receiver had approved CDCR's plan to transfer various groups of inmates out of dormitory settings into other prison facilities' spaces to achieve physical distancing among 8-person groups of inmates. The plan creating physically separate groups of inmates comports with CDC guidance concerning physical distancing among persons in analogous congregate group settings, and demonstrates the rapid responsive actions that Defendants are taking to prevent the spread of COVID-19 throughout its facilities.

Working under the guidance of the Receiver and CCHCS, CDCR has consistently promoted physical distancing among the inmate population. On March 20, 2020, CCHCS's Director of Health Care Operations, Dr. Steven Tharratt, and CDCR's Director of the Division of Adult Institutions, Connie Gipson, issued joint guidance to institutions among, other things,

directed implementation of social distancing as much as possible for all inmates and staff, with particular emphasis for the most vulnerable patients, including those most at risk per clinical judgment. (Gipson Decl. Supp. Defs.' Reply, ¶ 5.) The guidance also recommended against cohorting or housing vulnerable patients together because they are more susceptible to contracting and rapidly spreading the disease to other high-risk patients and are at high risk for developing serious complications or death related to the disease. (*Id*.) Indeed, any suggestion that medically high-risk *Coleman* inmates should be housed together to protect them from COVID-19 is incorrect and medically dangerous.

Furthermore, on April 10, 2020, the Receiver wrote a memorandum to CDCR Secretary Ralph Diaz recommending the creation of 8-person pods within CDCR's dormitory housing to promote physical distancing among inmates. (Gipson Decl. ¶ 6.) The memorandum reiterated that CDCR was not able to initiate any inmate movements between institutions to achieve necessary social distancing without the approval of CCHCS officials. (*Id*.) This memorandum and its supplement coincided with efforts by CDCR staff to assess efforts to achieve greater inmate distancing with healthcare staff. (*Id*.) As CDCR staff gathered further information and prepared plans consistent with the Receiver's instruction, prisons were directed to begin establishing 8-person pods or implement measures to promote six feet of distance between inmates. (*Id*.)

Based on the need to move inmates in order to facilitate this process, CDCR staff also developed an inmate transfer schedule. (Gipson Decl. ¶ 7.) Director Gipson submitted a transfer plan, including identification of numbers of inmates to be moved from certain institutions and a proposed movement schedule, to the Receiver and the Secretary on April 17. (*Id*.) This plan is intended to create distancing for all inmates in the identified institutions, and does not differentiate based on inmate medical or mental health factors. (*Id*.) The Receiver requested additional information concerning the plan, and on April 20, Director Gipson submitted a revised transfer plan to the Receiver and Secretary for approval, which was approved on the same day. (*Id*.)

Defendants informed the *Plata* Court and *Plata* Plaintiffs of the plan in conjunction with the status conference that day. Defendants' counsel in *Coleman* electronically delivered an unredacted version the plan to *Coleman* Plaintiffs' counsel later on April 20.[3] (*See* Decl. J. Yellin Supp. Pls. Request to File Under Seal, ECF No. 6631-1 at 2, 5.) Given the sensitive information in plan, Defendants' counsel provided it under the case's protective orders. (*Id*.) Under the approved plan, inmates will begin moving to facilitate physical distancing of 8-person pods on April 22, and will be completed by April 29. (Gipson Decl. ¶ 7.) As a result, approximately 1,300 inmates will be moved into 8-person pods to promote physical distancing. (*Id*.) This quick action by CDCR, working in conjunction with the Receiver and CCHCS to protect the health and safety of inmates from COVID-19, demonstrates that Defendants' multi-faceted plan is and continues to be a reasoned and active response to the global pandemic. As Judge Tigar held, CDCR's plan to prevent and manage the spread of COVID-19 in its institutions statewide, cannot violation the constitution. (*Plata* ECF No. 3291 at 13-14.)

CONCLUSION

As determined by the *Plata* court, CDCR's response to COVID-19 has already been found constitutionally adequate. Plaintiffs' objections raise no new issues or concerns related to this case which justify disturbing any prior ruling regarding CDCR's plan. CDCR's plan reflects a thoughtful, informed, response—in real time—to a rapidly evolving worldwide pandemic. Defendants will continue to make any appropriate changes as circumstances change while working towards their ultimate goal: to keep all inmates and staff safe throughout this pandemic.

[3] This is contrary to Plaintiffs' assertions in their response to CDCR's COVID-19 plan that Defendants had not provided them with the plan before the response was filed. (ECF No. 6626 at 8; ECF No. 6627 at 6-7.)

Dated: April 22, 2020

Respectfully Submitted,

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

RALPH COLEMAN, et al., Plaintiffs, **v.** **GAVIN NEWSOM, et al.,** Defendants.	2:90-cv-00520 KJM-DB (PC) **DECLARATION OF CONNIE GIPSON IN SUPPORT OF DEFENDANTS' REPLY REGARDING CDCR'S COVID-19 PLAN**

I, Connie Gipson, declare:

1. I am employed by the California Department of Corrections and Rehabilitation (CDCR) and am the Director of CDCR's Division of Adult Institutions. I have worked for CDCR since 1988. I started my CDCR career as a medical technical assistant at the California Institution for Women, where I worked from 1988 to 1997. From 1997 to 2008, I held several positions at Wasco State Prison, including captain, business manager, and health program coordinator. From 2008 to 2010, I was the Associate Warden at North Kern State Prison. From

2010 to 2013, I served in multiple positions at California State Prison, Corcoran, including as Warden, Acting Warden, and Chief Deputy Warden. From 2013 to 2016, I served as the Associate Director of general population male offenders at CDCR's Division of Adult Institutions. From 2016 to 2019, I served as deputy director of facility operations at the Division of Adult Institutions. In 2019, I was promoted to the Acting Director of the Division of Adult Institutions, and was appointed to my current position as the Director in April 2019. I am competent to testify to the matters set forth in this declaration and, if called upon by this Court, would do so. I submit this declaration in support of Defendants' reply addressing Plaintiffs' objections to CDCR's COVID-19 strategic plan.

2. The Division of Adult Institutions is comprised of four mission-based disciplines which include Reception Centers, High Security (males), General Population (males), and Female Offenders. Among other tasks, the Division of Adult Institution works with communities and the government on programs to improve inmate programming, directs, advises and mentors Wardens, on matters related to institution operations, and represents the mission based program area, the Division, and CDCR in hearings and meetings with the Administration, the Legislature, and government agencies. As Director, my responsibilities include, but are not limited to, ensuring that the needs of all inmates are met. For example, my responsibilities include ensuring that all inmates have safe and secure housing and appropriate access to healthcare, self-help, education, and rehabilitation programs. In addition, I also need to ensure that all institutions have a qualified workforce available.

3. In January 2020, CDCR was notified by California public health officials about potential global impacts from the growing spread of the novel coronavirus and its associated disease, COVID-19. At that time, like the rest of the world, CDCR began monitoring the progress of the virus and public health guidance regarding its risks to persons. As world leaders declared a global pandemic, CDCR began convening work groups to assess the potential impact of COVID-19 on its inmate and staff populations and prison operations. In February 2020, as public health officials began providing further information concerning risks to the United States from the virus, CDCR began planning for COVID impacts and working with officials from

California Correctional Health Care Services (CCHCS) on strategies to address the pandemic throughout California's prison facilities.

4. On March 11, 2020 CCHCS issued a memorandum titled "2019 NOVEL CORONAVIRUS (COVID-19)" to advise healthcare providers throughout CDCR of new guidance concerning the disease issued by the Centers for Disease Control and Prevention (CDC), California Department of Public Health (CDPH) and California Occupational Safety and Health Administration (CalOSHA). On March 15, 2020, CDCR activated the Department Operations Center (DOC), a centrally-located command center where CDCR and CCHCS experts monitor information, prepare for known and unknown events, and exchange information centrally in order to make decisions and provide guidance quickly. I co-chair the DOC with Dr. Steven Tharatt from CCHCS, and together we make decisions about CDCR's and CCHCS's measures in response to the COVID-19 pandemic.

5. Among other duties and responsibilities, we issue various guidance to the field regarding COVID-19 issues on a real-time basis based on information we receive from a number of stakeholders and experts. This specifically includes the Receiver, who controls inmate movement and housing during this crisis. On March 20, 2020, Dr. Tharrat and I issued joint guidance concerning field operations that, for example, directed institutions to implement social distancing as much as possible for all inmates and staff, with particular emphasis for the most vulnerable patients, including those most at risk per clinical judgment. The guidance also recommended against cohorting or housing vulnerable patients together because they are more susceptible to contracting and rapidly spreading the disease to other high-risk patients and are at high risk for developing serious complications or death related to the disease. A true and correct copy of this memorandum is attached as Exhibit A.

6. On April 10, 2020, the *Plata* Receiver wrote a memorandum to CDCR Secretary Ralph Diaz recommending the creation of 8-person pods within CDCR's dormitory housing to promote physical distancing among inmates. Physical distancing is one of the CDC's many recommended actions that correctional institutions can take to prevent the transmission and spread of COVID-19 among inmates. The memorandum states that CDCR should not authorize

or undertake any inmate movements between institutions to achieve necessary social distancing without the approval of Health Care Placement Oversight Program in consultation with the CCHCS public health team. On April 12, the Receiver issued a supplemental memorandum clarifying that his earlier memo was not intended to affect any inter-institution transfers that are to address either medical, mental health, or dental treatment needs that are not available at the sending institution. A copy of the Receivers' April 10 and April 12 memoranda are attached as Exhibit B. I was working with the DOC and my team on efforts to achieve greater inmate distancing with healthcare staff, and when the Receiver issued his April 10 memorandum, I gathered more information to implement its concept. I worked with my staff and CDCR's Facilities Management Division to obtain a template for using prison gymnasiums to achieve the pods, and then began communicating with Associate Directors and Wardens to explain the concept and provide direction. As we gathered further information and prepared revised plans consistent with the Receiver's instruction, I directed the Associate Directors to have prisons begin establishing 8-person pods or implement similar measures to promote six feet of distance between inmates.

7. Based on the need to move inmates to facilitate this process, Division of Adult Institutions headquarters staff also developed an inmate transfer schedule. I submitted a transfer plan, including identification of numbers of inmates to be moved from certain institutions and a proposed schedule, to the Receiver and the Secretary on April 17. This transfer plan is intended to create distancing for all inmates in the identified institutions, and does not differentiate based on inmate medical or mental health factors. The Receiver requested additional information concerning the plan which my staff provided over the next few days. On April 20, I submitted a revised transfer plan to the Receiver and Secretary for approval, which was approved on the same day. The transfer plan targets those dorms that have not already achieved physical distancing by either creating eight person pods or establishing six feet of distance between inmates. Inmates will begin moving to facilitate creation of the 8-person pods on April 22, and will be completed by April 29. As a result of this plan, approximately 1,300 inmates will be moved to new housing units in order promote physical distancing.

I declare under penalty of perjury that to the best of my knowledge the above is true and correct. Executed on this 22nd day of April 2020, in Sacramento, California.

/s/ Connie Gipson
Connie Gipson

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Exhibit A

CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES

MEMORANDUM

Date: March 20, 2020

To: Wardens
Chief Executive Officers

From:
STEVEN THARRATT, MD, MPVM, FACP
Director, Health Care Operations
Statewide Chief Medical Executive

CONNIE GIPSON, Director
Division Adult Institutions

Subject: **COVID 19 Pandemic – Guidance Regarding Field Operations**

In response to the current coronavirus disease 2019 (COVID-19) pandemic, and out of an abundance of caution, California Department of Corrections (CDCR) and California Correctional Health Care Services (CCHCS) are taking necessary precautions in an effort to reduce exposure to both inmates and staff. This memorandum replaces the one sent on March 18, 2020, and provides guidance on inmate screening, isolation, quarantine, social distancing, and essential health care services.

Screening on Entry into the Prison

Immediately upon entry, all inmates must be screened for symptoms of influenza-like illness (ILI) including COVID-19. The inmate populations that must be screened include, but are not limited to, inmates entering via reception centers, receiving and release locations, fire camps, and returning from court, a higher level of care, or an offsite specialty appointment. The screening shall include:

1. Asking the following questions.
   a. Do you have a cough?
   b. Do you have a fever?
   c. Do you have difficulty breathing?
2. Measuring the patient's temperature.

Based on the outcome of the screening questions, temperature reading, and the nurse's clinical judgement, individuals shall be housed according to one of the three options noted below.

1) Isolation: Any inmate who answers "yes" to one or more of the screening questions and/or has a temperature above 100.4 must be isolated.
2) Quarantine: Reception center Inmates arriving from the jail who answer "no" to all of the screening questions must be quarantined for a period of 14 days.
3) Other Housing: *All other inmates* returning to CDCR or transferring between prisons who answer "no" to all of the screening questions may be housed as appropriate per custody and clinical protocol that does not require placing in quarantine.

Screening within the Institution

Patients with ILI symptoms including possible COVID-19 should be screened in a manner that minimizes exposures to others. Strategies to be considered include, but are not limited to, screening primarily in the housing unit clinics, separate "ILI-only" clinics, spaces made available by modified programming or, if needed, the triage and treatment area (TTA). Patients with ILI symptoms shall be isolated. Individuals exposed to patients with ILI symptoms should be quarantined.

Social Distancing

Social distancing strategies should be implemented as much as possible for all individuals; however, it is imperative that social distancing be enforced for the most vulnerable patients including, but not limited to, high risk 1, high risk 2, pregnant, and any other patient at high risk per clinical judgement.

Provide information to all individuals about why their movements may be restricted to a greater degree than others (e.g., older adults and those with serious health conditions), and consider the implications of potential stigma and social isolation. For prisons that do not have a large number of vulnerable patients, cohorting or housing these patients together should be avoided if possible. Cohorting vulnerable patients is not recommended as they are more susceptible to contracting and rapidly spreading the disease to other high-risk patients and are at high risk for developing serious complications or death related to the disease. For the most vulnerable patients delivery of meals and medications to the cell front should be considered *if feasible*.

General strategies for all individuals regardless of clinical risk will need to be tailored to the available space in the facility and the needs of the population and staff. Examples of strategies ***where feasible*** may include, but not be limited to:

- Maintaining a distance of six feet between individuals.

- Not congregating in groups of 10 or more individuals.
- Reassigning bunks to provide more space between individuals.
- Suspending group programs where participants are likely to be in close contact.
- Rearranging scheduled movements to minimize mixing of individuals from different housing areas.
- Minimizing housing assignment changes unless necessary for health care reasons and/or safety and security concerns.
- Providing meals inside the housing unit if feasible or extending meal times to reduce crowding and increase social distancing along with thoroughly disinfecting solid surfaces including but not limited to such as tables, chairs, railings, and door knobs.
- Restricting recreation yard usage to a single housing unit per yard, where feasible.

Essential Health Care Services

Hospital and Emergency Department Services

Hospital send outs should be limited to only those patients who require a higher level of care to prevent or reduce the risk of morbidity and mortality. If patients can safely receive clinically appropriate care at the prison they should not be sent out. Patients presenting with ILI symptoms that are manageable within our system capabilities should remain in our care. Symptomatic but stable patients should *not* be sent to emergency departments or community hospitals.

Specialty Services

Effective immediately, all elective procedures/surgeries shall be postponed, as well as onsite and non-essential offsite specialty medical appointments, until further notice. Use discretion in keeping only appointments that are absolutely necessary and consider telemedicine as an option as well. Examples of necessary specialty appointments include, but are not limited to, face-to-face oncology care for pre-chemotherapy planning, diagnostic colonoscopies for positive screening, and symptomatic patients that cannot wait several weeks for further evaluation and treatment. Patients who require frequent appointments outside the prison (such daily chemo or radiation therapy or transports to an offsite Narcotic Treatment Program) may require special housing accommodations, *if feasible*, and should wear a surgical mask if possible.

Primary Care Services

Health Care 7362 requests that require a face-to face encounter should be conducted in ways that minimize patient movement and exposure to others within the facility. If possible, during

regular business hours, primary care teams should consider triaging patients complaining of ILI symptoms at cell front using appropriate Personal Protective Equipment (PPE). After regular business hours, 7362 screening for patients with ILI or COVID-19 symptoms shall be done at cell front by a nurse. Transport to TTA shall be reserved for patients needing urgent or emergent care. Whenever patients with ILI symptoms must be transported outside their cell, the patient shall wear a surgical mask.

Non-essential primary care appointments with providers such as preventive health screenings, routine health care 7362 referrals, some chronic care visits, and other appointments that do not pose a risk of harm if delayed several weeks should be postponed.

Medications

Medications need to be converted to "Keep on Person" (KOP) where possible. If medications must be prescribed Nurse Administered or Direct Observation Therapy (NA/DOT), the regiment should be prescribed once or twice daily if possible. In addition to administering medications cell front or bedside for the most vulnerable patients, institutions should consider other situations where cell front medications can be given depending on staffing in order to reduce movement and the congregation of more than ten persons that does not allow social distancing.

The health and safety of all individuals within the institutions is a top priority. We believe taking these steps now is in the best interest of all. Please work together at the institution to operationalize the guidance provided above.

cc: Joseph Bick, MD
Renee Kanan, MD, MPH
Barbara Barney-Knox
Regional Health Care Executives
Regional Chief Nurse Executives
Regional Deputy Medical Executives
CCHCS Deputy Directors
Kimberly Seibel
Jennifer Barretto
Associate Directors, DAI

Exhibit B

CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES

MEMORANDUM

Date:	April 10, 2020
To:	Secretary Ralph DIaz
From:	J. Clark Kelso, Receiver
Subject:	CCHCS Guidelines for Achieving and Maintaining Social Distancing in California Prisons

In the face of the ongoing COVID-19 pandemic, California Correctional Health Care Services (CCHCS) will continue to be guided by the developing scientific and medical consensus regarding social distancing in correctional settings, as well as by the Receiver's authority under the Order Appointing Receiver and the applicable regulatory provisions of Title 15 of the California Code of Regulations. Accordingly, the Receiver has determined that CCHCS and California Department of Corrections and Rehabilitation (CDCR) should implement the following steps in their ongoing efforts to mitigate the risks associated with transmission of the COVID-19 coronavirus.

1. CDCR should not authorize or undertake any further movements of inmates between institutions to achieve necessary social distancing without the approval of Health Care Placement Oversight Program (HCPOP) in consultation with the CCHCS public health team. Inter-institution moves risk carrying the virus from one institution to another.

2. The Center for Disease Control's "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," dated March 23, 2020 (https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html), recommends maintaining social distance of 6 feet between inmates while acknowledging that "Strategies will need to be tailored to the individual space in the facility and the needs of the population and staff. Not all strategies will be feasible in all facilities." Necessary social distancing is already being achieved in both single- and double-celled units. In double cells, cell mates constitute one another's "social distancing cohort" for correctional purposes and are analogous to a family unit in the free world. With respect to housing in dorm settings, the Receiver has determined that necessary social distancing can be achieved by creating 8-person housing cohorts. Each cohort is to be separated from the others by a distance of at least six feet in all directions.

3. Any movement of inmates out of the dorms to achieve necessary cohort social distancing must be coordinated with, and may not occur without the concurrence of,

HCPOP to ensure to the extent feasible that such movement does not cause, contribute to or exacerbate the potential spread of the disease.

4. CCHCS will continue to monitor developments closely and will modify these guidelines as necessary and appropriate.

CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES

MEMORANDUM

Date:	April 12, 2020
To:	Secretary Ralph Diaz
From:	J. Clark Kelso, Receiver
Subject:	CCHCS Guidelines for Achieving and Maintaining Social Distancing in California Prisons

This memorandum supplements my memorandum dated April 10, 2020 and clarifies my intention regarding the steps set forth in that memorandum.

I had not intended for my April 10, 2020 memorandum to affect any inter-institution transfers that are to address either medical, mental health, or dental treatment needs that are not available at the sending institution, such as to provide a higher level of care or to reduce or prevent morbidity or mortality, or a safety or security issue that cannot be managed by the sending institution.

If you have any questions, please do not hesitate to contact me.