

XAVIER BECERRA
Attorney General of California
DAMON MCCLAIN (209508)
Supervising Deputy Attorney General
NASSTARAN RUHPARWAR (263293)
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5500
Facsimile: (415) 703-3035
Damon.McClain@doj.ca.gov

HANSON BRIDGETT LLP
PAUL B. MELLO (179755)
SAMANTHA D. WOLFF (240280)
425 Market Street, 26th Floor
San Francisco, California 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
pmello@hansonbridgett.com

Attorneys for Defendants

PRISON LAW OFFICE
DONALD SPECTER (83925)
STEVEN FAMA (99641)
ALISON HARDY (135966)
SARA NORMAN (189536)
RANA ANABTAWI (267073)
SOPHIE HART (321663)
1917 Fifth Street
Berkeley, California 94710
Telephone: (510) 280-2621
Fax: (510) 280-2704
dspecter@prisonlaw.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

MARCIANO PLATA, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

CASE NO. 01-1351 JST

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: July 16, 2020

Time: 10:00 a.m.

Crtrm.: 6, 2nd Floor

Judge: Hon. Jon S. Tigar

1 The parties submit the following joint statement in advance of the July 16, 2020
2 Case Management Conference.

3 **I. POPULATION REDUCTION**

4 **A. Releases**

5 *Defendants' Update:* After reducing its prison population by about 10,000 inmates
6 since mid-March 2020, CDCR announced additional plans for early releases on July 10,
7 2020, estimating that implementation of new measures will allow CDCR to release up to
8 8,000 inmates by the end of August 2020. These new measures fall into four categories,
9 described below.

10 **1. 180-Day Releases.**

11 To be eligible for release in this cohort, incarcerated persons must:

- 12 • have 180 days or less to serve on their sentence,
- 13 • not currently be serving time for domestic violence-related crimes or certain
14 violent crimes,
- 15 • have no current or prior sentences that require them to register as a sex
16 offender under Penal Code section 290, and
- 17 • not have an assessment score that indicates a high risk for violence.

18 This statewide cohort is currently being screened and released on a rolling basis to
19 continuously create more space in all institutions throughout the pandemic, and will
20 continue to be screened until CDCR determines such releases are no longer necessary.
21 CDCR estimates 4,800 people could be released by the end of July 2020.

22 **2. One-Year Releases.**

23 To be eligible for release, incarcerated persons must:

- 24 • have 365 days or less to serve on their sentence;
- 25 • not currently be serving time for domestic violence-related crimes or certain
26 violent crimes;
- 27 • have no current or prior sentences that require them to register as a sex
28

offender under Penal Code section 290;

- not have an assessment score that indicates a high risk for violence; and
- be housed at one of the following institutions, which were selected based on several factors, including, but not limited to, the size of the population of high-risk inmates and the physical plant layout: San Quentin State Prison (SQ), Central California Women's Facility (CCWF), California Health Care Facility (CHCS), California Institution for Men (CIM), California Institution for Women (CIW), California Medical Facility (CMF), Folsom State Prison (FOL), and Richard J. Donovan Correctional Facility (RJD).

Inmates at age thirty or over who meet eligibility criteria are immediately eligible for release. Those who meet these criteria and are age twenty-nine or under will be reviewed on a case-by-case basis for release. CDCR will consider medical risk, case factors, and time served, among other factors, in determining whether to expedite release for those identified in this cohort. This cohort will continue to be screened on a rolling basis until CDCR determines such releases are no longer necessary.

3. Positive Programming Credits.

To recognize the impact on access to programs and credit earning during the COVID-19 pandemic, CDCR is awarding a one-time Positive Programming Credit (PPC) to all eligible incarcerated people.

This credit of twelve weeks will be awarded not only to help offset credits not earned due to program suspensions, but also to recognize the burden incarcerated people have shouldered through these unprecedented times. CDCR estimates that nearly 108,000 people will be eligible for PPC. Further, CDCR estimates the population will reduce by approximately 2,100 by the end of August 2020 as a result of the application of this credit.

To be eligible to receive this credit, an incarcerated individual must:

- be currently incarcerated at one of the thirty-five adult institutions, community correctional facilities, fire camps, Male Community Reentry

Program, Community Prisoner Mother Program, Custody to Community Transitional Program, Alternative Custody Program, or a state hospital;

- not be condemned to death or serving life without the possibility of parole, as these inmates are not eligible for credit earning; and
- have no serious rules violations between March 1 and July 5, 2020, including no Division “A” through “F” offenses, for example, murder, rape, battery, assault, arson, escape, possession or distribution of contraband, possession of a cellphone, or gang activity.

On July 9, Secretary Diaz wrote a letter to all incarcerated people notifying them about the foregoing positive programming credit earning-program. The letter can be found on CDCR’s website at <https://www.cdcr.ca.gov/covid19/letter-to-all-incarcerated-people/>.

4. High-Risk Medical Individuals.

Individuals deemed “high risk” are considered to be at greater risk for morbidity and mortality should they contract COVID-19. They include people age sixty-five and over who have chronic conditions, or those with respiratory illnesses like asthma or chronic obstructive pulmonary disease (COPD). The estimated number of releases in this cohort is currently being calculated.

To be eligible for release, incarcerated persons must:

- be deemed high risk for COVID-19 complications by CCHCS, indicated by a COVID weighted score of four or higher, noting that individuals ages sixty-five and over are automatically awarded four points, and individuals ages sixty-four and younger with a COVID weighted score of four or higher also qualify;
- not be condemned to death or serving life without the possibility of parole;
- have an assessment indicating a low risk for violence; and
- not be a high-risk sex offender, meaning a convicted sex offender who is

1 required to register pursuant to Penal Code Section 290, and has been
 2 identified to pose a higher risk to commit a new sex offense in the
 3 community, as determined using a standard risk assessment tools for sex
 4 offenders.

5 *Plaintiffs' Position:* Plaintiffs continue to believe that significant population
 6 reductions are necessary to protect those incarcerated in CDCR from another uncontrolled
 7 COVID-19 outbreak. In that regard, we welcome the State's July 10 announcement,¹
 8 described above, of the one-time 12-week credit award for many incarcerated people, and
 9 the three programs that will consider some for early release. However, the State's actions
 10 only require a release of relatively few from the 35 adult prisons in the next two months,
 11 and it is not known if or how many others will be actually released by then or afterwards,
 12 particularly among those who are medically vulnerable to COVID-19 complications.
 13 Unless and until sizable numbers of people are released, especially the medically
 14 vulnerable, the State's new initiatives will have very little meaningful impact now or in the
 15 near future on reducing sickness and death, or maximizing space in the prisons.

16 The one-time 12-week credit award is the only one of the State's recently
 17 announced actions certain to result in people being released. That said, the State's estimate
 18 that about 2,100 will be released early because of this award between now and September
 19 overstates the impact on the 35 state prisons. That is because the 2,100 estimate includes
 20 what Plaintiffs believe are hundreds of people who are not in the 35 prisons but in camps,
 21 community facilities, and state hospitals, who also are getting the credits.² The credit
 22

23
 24 ¹ See CDCR, *CDCR Announces Additional Actions to Reduce Population and*
 25 *Maximize Space Systemwide to Address COVID-19* (July 10, 2020),
 26 [https://www.cdcr.ca.gov/news/2020/07/10/cdcr-announces-additional-actions-to-reduce-](https://www.cdcr.ca.gov/news/2020/07/10/cdcr-announces-additional-actions-to-reduce-population-and-maximize-space-systemwide-to-address-covid-19/)
 27 [population-and-maximize-space-systemwide-to-address-covid-19/](https://www.cdcr.ca.gov/news/2020/07/10/cdcr-announces-additional-actions-to-reduce-population-and-maximize-space-systemwide-to-address-covid-19/).

28 ² On Monday, July 13, 2020, we asked Defendants how many of the approximately
 2,100 early releases between July and September from the one-time 12-week credit award
 would be of those in the 35 prisons, and how many would be of those receiving credits in
 all other facilities. On July 14, Defendants replied that they did not have that information.

award is deserved by those not confined in the 35 prisons, but their release does not reduce crowding or create space in those prisons. Further, even assuming all 2,100 releases will be from the 35 adult prisons, it would represent a paltry 2% decrease of those prisons' current approximately 104,000 total population. This will not create sufficient space in a system that remains overcrowded—as of June 10, according to Defendants, the prisons remain at 125.7% of design capacity. ECF 3354 at 2.

None of the three other programs announced by the State—the 180-day, One-year (for certain prisons), and Medical Risk programs, respectively—actually require that anyone be released at any time.³ In other words, the programs do not provide that anyone shall be released. Instead, the programs provide that CDCR will consider release for some who meet specified criteria. Yet even the timing of this consideration is unclear: the programs do not require an eligible person be considered at any particular time, or even the consideration of any particular number of eligible people during any particular period of time.⁴ Because the State failed to do anything other than to say it will consider release for some when it chooses to do so, at this point it can only be said that it is not known if these programs will result in enough releases to substantially reduce sickness, death, and crowding in the prisons, including for the benefit of the medically vulnerable.⁵

³ The State, below, reports that two of these programs will require releases. As we read it, the announcement does not mandate releases under those programs. As we explain below, full monitoring will determine how many people are actually released.

⁴ Relatedly, the programs do not provide a means for an incarcerated person who believes they are eligible to learn whether they are, and if so, whether they are being or when they will be considered for release, or whether they have been considered and denied. This is at the least very unfortunate. For most, when they might or will be released is the central concern of imprisonment. This is especially true during the COVID-19 pandemic. In our view, knowledge of this fact, as well as respect for the individual's basic dignity, should compel the State to tell people that they will be or are being considered, and the determination that is reached.

⁵ CDCR's "one-year" early release consideration program by its terms is limited to patients at eight prisons which, to quote the announcement, "house large populations of high-risk patients." We agree with the focus on high-risk patients, and on July 14 asked

1 Given the importance of population reduction in reducing the risk of COVID-19 in
 2 the adult prisons, Defendants must provide frequent, timely, and complete information and
 3 data about its new programs and their impact, including the number of actually released.
 4 On July 14, we asked Defendants to provide a report, every two weeks, with the following
 5 information:

- 6 (1) the number of incarcerated people at the 35 adult institutions who have been
 7 released early during the relevant time period as a result of the one-time 12-
 8 week credit award;
- 9 (2) the number of incarcerated people at the 35 adult institutions who have been
 10 released early during the relevant time period as a result of each of the three
 11 programs announced on July 10, 2020 (“180-day release,” “One-year
 12 release,” and “High-Risk Medical”);
- 13 (3) the number of incarcerated people at the 35 adult institutions for whom a
 14 decision on early release was made pursuant to each of the three programs
 15 announced on July 10, 2020; and
- 16 (4) the number of such determinations granting or providing for release pursuant
 17 to each of the three programs announced on July 10, 2020.

18 We asked to receive the first such report by July 31 for the period ending July 25,
 19 the second report by August 14 for the period ending August 8, etc. On July 14,
 20 Defendants replied that it is not yet known what information about these release programs
 21 can be provided, including whether the data we requested will be provided. Defendants
 22 further stated that a report of some kind will be provided on July 31, and that they are
 23 “open to hearing [our] comments” regarding it. Defendants also did not say how

24 _____
 25 CDCR to add seven other prisons to the program, each of which houses a greater
 26 percentage of high-risk patients than at least one and in some cases several of the prisons
 27 included in the program. On July 14, Defendants replied that they will consider whether to
 28 add more prisons to the list, and that the prisons they chose to include were based on
 physical layout as well as high-risk medical percentages. We will follow-up with
 Defendants regarding this matter.

1 frequently subsequent reports would be provided.

2 The importance of reducing the prison population to decrease the risk of illness and
3 death caused by COVID-19, especially to the medically vulnerable, cannot be over-stated.
4 As such, Defendants efforts to reduce the population via its newly announced programs
5 must be fully transparent so that adequate monitoring can occur. The number of people
6 considered and released from the prisons under each part of the program are critical to
7 assessing whether each discrete program has been effective to reduce the population and
8 the risk of harm from COVID-19. Defendants' promise to provide an unspecified report
9 on July 31 and then hear comments, when we have already stated what exactly is needed,
10 inspires little confidence that the information necessary for adequate monitoring will be
11 received then or thereafter. The Court, which has rightly emphasized the necessity of
12 population reduction measures, should order Defendants to report the data every two
13 weeks, as set forth above.

14 *Defendants' Position:* First, with respect to Plaintiffs' reference to the percentage
15 of inmate population at CDCR's prison as of June 10, the number of inmates at CDCR's
16 prisons has decreased since June 10 by 2,240 (or 2.6%) to a total of 104,725
17 inmates/123.1% of design capacity.⁶

18 More importantly, CDCR's additional plans for early releases constitute yet another
19 new, bold, and unprecedented move that has not been replicated in any other jurisdiction.
20 Also, the new plans have only been in place for five days. Therefore, it is premature for
21 Plaintiffs or anyone to make any predictions about the exact numbers of the upcoming
22 releases. Similarly, it is premature to make any assumptions about the impact of the
23 upcoming releases on CDCR's COVID 19 efforts and draw the conclusion that the planned
24 releases will not be sufficient to mitigate the risks of COVID-19 at CDCR's prisons.
25 However, it bears noting that Plaintiffs' statement that none of the three programs

26
27
28 ⁶ See CDCR's July 8, 2020 weekly population report, available on CDCR's website at
<https://www.cdcr.ca.gov/research/population-reports-2/>.

announced by the State actually require releases is inaccurate. Both the 180-day and One-Year programs provide for releases assuming incarcerated persons meet the stated eligibility criteria. CDCR remains committed to expeditiously execute on the new release plans it has put in place and will keep the Court and Plaintiffs apprised of any updates.

B. Other Population Reduction Efforts

Plaintiffs' Position: We are aware of the long-standing medical parole and compassionate release laws and processes mentioned by Defendants below, but have no information regarding early releases of those in hospice or who are pregnant. We believe the number of people released early as a result of the programs described below is very small, but support all such efforts.

Defendants' Position: Between July 1 and today, the inmate population was reduced by 1,901 people, accomplished through a combination of natural attrition and early releases. In addition to the efforts discussed above, Defendants continue to evaluate inmates who may be appropriate for early release pursuant to medical parole or compassionate release or due to their hospice or pregnancy status.

II. INTAKE

Defendants have, in cooperation with the Receiver, closed all intake from the counties until July 27.

Plaintiffs' Position: As indicated in previous statements, we believe that intake must remain suspended until (1) CDCR initiates and completes the process of moving medically vulnerable people to cells, (2) transfers can be accomplished safely, and (3) the population decreases to the point that social distancing can be safely practiced and prisons have sufficient space to use for isolation and quarantine in the event of an outbreak.

Defendants' Position: CDCR will evaluate whether to continue the suspension of intake by the end of July. CDCR will work with its healthcare and county partners to develop safe practices before resuming intake.

III. TRANSFERS

Plaintiffs' Position: CCHCS continues to work on a revised patient testing and transfer protocol, necessary after transfers in late May and June resulted in the spread of COVID-19 and mega-outbreaks at San Quentin and the California Correctional Center. CCHCS has reported that a version of the new protocol will be shared for review by Plaintiffs this week. The new protocol is needed not just because of the problems mentioned above, but because essential and emergent transfers continue, numbering according to CCHCS nearly 450 in the three weeks prior to July 12.

IV. SAFELY HOUSING MEDICALLY VULNERABLE PEOPLE

Plaintiffs' Position: Individuals at risk of severe complications or death if infected with COVID-19 remain housed in crowded CDCR dorms throughout the state. As reported in prior Case Management Conference Statements, the parties previously reached an agreement, in principle, on a plan to move as many medically vulnerable patients from dorms to cells as possible (within their current facility) and to prioritize moving the most elderly. However, this plan still has still not come to fruition.

On July 6, 2020, CCHCS prepared a document titled "Dorm to Cell Movement," that outlined the initial plan to begin such moves. Based upon the document, such movements would take place in a phased approach, beginning with four institutions (CMC, CTF, SATF, SOL). A conference call with the Wardens and CEOs explaining the process was to take place last week, and, based on bed availability, a list of patients to be offered moves would be provided to the institution, to begin PCP consults offering them. If no custody concerns arose, those who agreed to the moves would be rehoused in a cell. Those individuals whose move raised custody concerns would be seen in Committee.

Unfortunately, no such moves have occurred. Based on information received from CCHCS on July 14, 2020, the plan to conduct these dorm to cell moves has been suspended while CDCR and CCHCS work to ensure adequate bed availability on each yard for isolation/quarantine purposes. Plaintiffs agree that creating adequate quarantine and isolation space is critical, but remain concerned about the significant number of

1 medically vulnerable patients still residing in overcrowded dorms. Defendants need to
 2 develop plans to ensure that there is sufficient space to place medically vulnerable people
 3 in safe and appropriate housing during this pandemic.

4 *Defendants' Position:* As reported in the last case management conference
 5 statement, CDCR's Division of Adult Institutions was ready to facilitate moves of
 6 medically high-risk patients from dorms to cells within the same institution once CCHCS
 7 provided DAI with a list of patients who, after patient education has been provided to
 8 them, have agreed to move from their current dorm to a cell. Per the Receiver's
 9 instructions, however, the move of medically high-risk patients from dorms to cells within
 10 the same institution has been placed on hold. Defendants remain committed to working
 11 with the Receiver to facilitate these moves or any other moves to safely house medically
 12 high-risk inmates if such moves have been recommended and approved by the appropriate
 13 experts. Because moving inmates bears risks, Defendants emphasize that any plans to
 14 move inmates (no matter if it is the movement of medically high-risk inmates or other
 15 inmates to create space to house high-risk inmates) should be carefully developed in
 16 collaboration with and executed under the supervision of appropriate health experts.

17 **V. COVID-19 TESTING**

18 **A. Staff Testing**

19 *Plaintiffs' Position:* During the last Case Management Conference, the Court
 20 ordered Defendants to provide to Plaintiffs a revised draft of the staff testing policy no
 21 later than July 16, 2020. As of the time of this filing, Plaintiffs have not yet received the
 22 revised policy. We will review the new policy and, if necessary, provide further comments
 23 to Defendants once we receive these revisions. With regard to the staff testing data
 24 presented by Defendants below, we observe that the percentage tested at each institution
 25 remains unavailable, and CDCR is unable to say when that fundamental measure will be
 26 presented.

27 *Defendants' Position:* CDCR's plan to conduct baseline staff testing across all of the
 28

institutions is well underway and will be completed soon. A first round of baseline testing has been completed at most institutions and some initial and follow-up testing at a number of institutions will be completed by July 19, 2020. The table below sets forth the dates of completed and pending staff testing at each institution and the number of staff tested to the extent that data is available. As reflected in the table, multiple rounds of staff testing have occurred at some institutions.⁷

Because of the short time within which CDCR has conducted a massive amount of baseline staff testing, CDCR has not yet had a chance to reconcile all of the data it has collected, and is currently unable to present it all in a tidy format. But CDCR is working to develop a standardized format for regularly reporting staff-testing data.

Because staff are comprised of different groups (e.g., custody staff, medical staff, Prison Industry Authority staff), it is not easy to provide a percentage of staff tested at each institution. Additionally, the method by which CDCR could potentially calculate percentages might be misleading because it would be based on authorized positions. Thus, vacancy rates at each institution would skew the result of the calculation. Further complicating the task is the fact that while some staff are considered to be employed by a particular institution, they work remotely. And during any round of testing, some staff will not end up being tested because they are on vacation or some other type of leave, on temporary assignments at other locations, or temporarily working remotely. There have also been some staff refusals to test.⁸ Regardless, CDCR will endeavor to develop a standardized format for reporting staff-testing data that will include the percentage of staff tested at each prison.

PRISON	DATES OF TESTING	NUMBER OF STAFF TESTED
Avenal State Prison	May 27-29, 2020	1,168

⁷ The table represents a snapshot in time. Completed tests are not counted until the results are received, and new results are provided by the labs every day.

⁸ On July 13, CDCR issued a memorandum to all staff setting forth expectations regarding staff testing and advising that an employee who refuses to test will face progressive discipline, up to and including termination.

	June 1-2, 2020 June 23-26, 2020 June 29	
California City Correctional Facility	July 9-10, 2020	510 Additional Pending Results
California Correctional Center	July 1-2, 2020 July 16-18, 2020	662 Additional Pending Tests
California Correctional Institution	July 2-3, 2020 July 15-17, 2020	1,136 Additional Pending Tests
California Health Care Facility	June 24-26, 2020 June 29-July 3, 2020	3,480
California Institution for Men	May 26-27, 2020 June 1-3, 2020 June 8-10, 2020	1,603
California Institution for Women	May 15, 2020 June 8-9, 2020 July 13-15, 2020	1,029 Additional Pending Results
California Men's Colony	July 6-7, 2020	1,389
California Medical Facility	June 24-July 3, 2020 July 6-7, 2020	2,188
California Rehabilitation Center	June 25-26, 2020 June 30, 2020 July 10, 2020	850
California State Prison, Corcoran	June 11-15, 2020 June 30-July 3, 2020 July 6-7, 2020	1,964
California State Prison, Los Angeles County	July 8-10, 2020	1,275
California State Prison, Sacramento	July 8-10, 2020	1,335
California State Prison, Solano	June 26-July 3, 2020 July 6-7, 2020	1,248
Substance Abuse Treatment Facility	July 9-11, 2020	1,453
Calipatria State Prison	July 15-17, 2020	195 Additional Pending Results
California State Prison, Centinela	July 2-3, 2020 July 17-19, 2020	799 Additional Pending Tests
Central California Women's Facility	June 26, 2020	1,230

	June 29-July 3, 2020 July 6-7, 2020	
Chuckawalla Valley State Prison	July 2-3, 2020 July 17-19, 2020	551 Additional Pending Tests
Correctional Training Facility	July 9-11, 2020	1,140
Deuel Vocational Institution	July 13-15, 2020	933 Additional Pending Results
Folsom State Prison	July 8-9, 2020	1,183
High Desert State Prison	July 1-2, 2020 July 16-18, 2020	910 Additional Pending Tests
Ironwood State Prison	July 2-3, 2020 July 17-19, 2020	609 Additional Pending Tests
Kern Valley State Prison	July 6-7, 2020	1,271
Mule Creek State Prison	July 13-15, 2020	1,368 Additional Pending Results
North Kern State Prison	July 6-7, 2020	1,061
Pelican Bay State Prison	July 13-15, 2020	1,095 Additional Pending Results
Pleasant Valley State Prison	July 9-11, 2020	1,024 Additional Pending Results
Richard J. Donovan Correctional Facility	July 15-17, 2020	374 Additional Pending Tests
Salinas Valley State Prison	July 9-11, 2020	1,503
San Quentin State Prison	June 11-15, 2020 June 24-25, 2020 June 30-July 3, 2020 July 6-7, 2020	1,724
Sierra Conservation Center	July 13-15, 2020	794 Additional Pending Results
Valley State Prison	July 13-15, 2020	923 Additional Pending Results
Wasco State Prison	July 6-7, 2020	1,136

CDCR continues to consider Plaintiffs' comments and concerns about the staff testing plan and has provided them to the California Department of Public Health (CDPH) for consideration. CDCR also intends to have its public health expert evaluate the plan and

1 Plaintiffs' concerns. CDCR expects to receive additional input from CDPH regarding the
2 staff-testing plan. CDCR will provide the current iteration of the plan to Plaintiffs by July
3 16. But as Defendants have repeatedly advised, the plan will be subject to change based
4 on new information and public health expertise.

5 **B. Testing of Incarcerated People**

6 *Plaintiffs' Position:* CCHCS reports that it continues to plan for deployment
7 sometime this month of rapid COVID-19 testing capabilities at the prisons, and states that
8 such machines will be run 24 hours a day. It is not clear whether or to what degree rapid
9 testing will supplant the format currently used. The current test format, according to
10 CCHCS, is subject to increased delays in reporting results from its prime vendor
11 laboratory.

12 A major problem has arisen with respect to monitoring re-testing of patients,
13 including of the kind the Court was told at the last Case Management Conference would be
14 undertaken at the California Institution for Men, and which CCHCS says will happen
15 weekly for all at San Quentin who previously tested negative (and which it said should
16 occur at other prisons that have or are experiencing major outbreaks). Currently, while
17 those in charge say such re-testing should be done, there is no data available within
18 CCHCS or that can be made available to us that demonstrates whether or to what degree
19 such re-testing is actually being done. In this regard, the CCHCS "Population COVID-19
20 Tracking" website reports only patients' initial tests.

21 Re-testing is critical to reducing the spread of the virus, and when hundreds or
22 thousands of patients require such tests, CCHCS needs an accurate and timely systemic
23 process to determine if required tests have been timely done. It is not clear from our
24 discussions that it will be able to do so. We understand it is a complex matter, given the
25 variety of platforms and vendors now sometimes used for COVID testing, but we believe it
26 is essential that this information be collected and tracked.

1 **VI. PRISON-SPECIFIC UPDATES**

2 **A. San Quentin (SQ)**

3 *Plaintiffs' Position:* San Quentin is a disaster, given the number of patients
4 infected, the number who so far have died, the current number hospitalized (56 as of
5 Monday evening, according to CCHCS, including 20 in ICUs, eight of those intubated),
6 the establishment of a large "Alternate Care Site," a kind of skilled nursing facility,
7 equipped and staffed by a contractor at presumably enormous cost to the State, the need to
8 re-direct sizable numbers of staff from other prisons, the hiring of other temporary staff,
9 and the profound disruption to prison operations including incarcerated people being
10 unable to get outdoors for exercise or even make phone calls.

11 Plaintiffs again observe that in mid-June public health experts called for at least a
12 50% reduction in capacity at the prison so that the outbreak could be adequately managed.
13 See Williams & Bertozzi, *Urgent Memo COVID-19 Outbreak: San Quentin Prison* (June
14 13, 2020) at 3. "It is a frightening public health reality," the experts' report warned, "that
15 in a matter of days there may be no cells to isolate a potentially infectious COVID-19
16 patient." *Id.* Unfortunately, this came to pass: patients with active COVID-19 at San
17 Quentin, who present a risk of infecting others, continue to be housed in the same facilities
18 with others known to be negative (including, in at least one instance, a positive and
19 negative patient housed in the same cell). Resolving this problem, CDCR now says,
20 requires activation of what its managers refer to as "temporary structures" to house certain
21 patients (which will be in addition to the tents currently being used for temporary housing),
22 then a series of transfers of patients between buildings, all to happen at some unknown
23 future date. Plaintiffs ask the Court to discuss with Defendants, who are responsible for
24 these "temporary structures" and transfers, the specific timeline for getting this necessary
25 work done, and exploring whether an order is necessary to facilitate its prompt completion.

26 Despite the State's response to the disaster, it has not successfully contained the
27 virus. Unfortunately, new positive cases continue to be identified throughout the prison.
28 On July 14, CCHCS reported the first positive COVID-19 patients in H-Unit, in which

1 approximately 400 people are housed in the only dorms (there are five) at San Quentin,
2 and which until then had been the only part of the prison with no confirmed COVID-19
3 cases. CCHCS says that all in the unit will now be re-tested.

4 Further, Plaintiffs have serious questions whether the State's response could be
5 replicated if a similar disaster occurred at a more remotely located prison, where hospital
6 beds and medical staffing resources are limited in comparison to the Bay Area, or if a
7 similar outbreak occurred now at another prison, particularly one nearby from which staff
8 have been redirected to San Quentin.

9 Finally with regard to San Quentin, on the evening of July 8, 2020, CDCR and
10 CCHCS published a joint update stating that all staff entering the prison are being provided
11 N95 masks that are mandated to be worn when working at the prison. On July 9, we asked
12 if incarcerated people are being provided N95 masks as well. On July 14, CDCR stated
13 that it was determined that N95 masks were necessary at a prison with a COVID-19
14 outbreak of the scope that has occurred at San Quentin, and reported that those who reside
15 at the prison would be provided N95 masks beginning on that date. We appreciate this
16 action, but regret that in this regard the safety of incarcerated people appears to have been
17 at best an after-thought.

18 *Defendants' Position:* CDCR has taken a number of steps to address the outbreak at
19 San Quentin and is actively working with CCHCS to implement additional measures. At
20 present, 533 previously COVID-19 positive inmates have "resolved," 1,454 inmates
21 remain actively COVID-19 positive, and of those, 410 cases are new within the last 7 days.
22 San Quentin's gym (which currently houses 91 inmates) remains free of any COVID-19
23 cases, and staff who work there are cohorted and not permitted to work elsewhere in the
24 prison to ensure there is no cross-contamination.

25 Currently, all staff entering the prison must wear an N95 mask while performing
26 duties on institution grounds. On July 14, 2020, inmates were also offered N95 masks. It
27 will be optional for inmates to wear an N95 mask; inmates who choose not to wear one
28

1 must instead wear a cloth face covering.

2 Additionally, nine tents have been installed, each with a maximum capacity of 10
3 patients. CDCR is exploring larger temporary structures in lieu of these tents to provide
4 additional capacity and is working with the State Fire Marshal at present to explore this
5 option. CDCR has also modified San Quentin's Prison Industry Authority's on-site
6 furniture facility, transforming into a 220-bed alternative care site to treat COVID-19
7 positive patients at the institution and reduce the impact to outside health care facilities.
8 Forty-six symptomatic, medically low-risk, COVID-19-positive inmate patients are
9 presently housed in the alternative care site, which is akin to a skilled nursing level of care
10 and is staffed with doctors, registered nurses, and custody staff.

11 Additionally, San Quentin's population has been reduced by 659 inmates from
12 March through July 8, 2020. This reduction is attributable to the suspension of intake from
13 county jails, natural releases, and expedited releases from the institution. All inmates
14 being released from San Quentin are offered placement into Project Hope⁹ in the
15 community, which provides hotel rooms at no cost to those needing to quarantine or isolate
16 in the community upon release. All inmates released from San Quentin are provided
17 COVID-19 educational information and cloth face coverings.

18 Further, on June 8, CDCR suspended the transfer of any inmates into or out of San
19 Quentin except for emergencies. San Quentin implemented modified programming such
20 that dining and showers are provided in staggered schedules to allow for physical
21 distancing and proper disinfection between each use. Cleaning supplies and personal
22 protective equipment are provided to inmates on a weekly basis; additional hand sanitizer
23 refills are available upon request. Staff must disinfect their equipment prior to coming on
24 shift and during the day if contact occurs with positive or symptomatic inmate patients.

25 Tens of thousands of additional pieces of personal protective equipment have been
26 _____

27 ⁹ Project Hope is a partnership between CDCR, the California Office of Emergency Services
28 (CalOES) and Federal Emergency Management Agency. Transportation to Project Hope-
accommodations is provided by CDCR.

1 sent to San Quentin and distributed to inmates and staff. Strict guidelines have been
2 implemented which mandate the use of PPE while on institution grounds. All inmates
3 have been provided five reusable cloth barrier masks to be used whenever moving around
4 the institution. Staff must wear a facial barrier at all times or are provided the specific PPE
5 that is required based upon their assigned work location. Surgical masks are provided to
6 incarcerated critical workers.

7 A unified incident command center has been established at San Quentin to
8 coordinate custody and medical response to COVID-19 cases. The team is comprised of
9 medical, custody, emergency management and infectious disease experts from CDCR,
10 CCHCS, the California Governor's Office of Emergency Services (Cal OES), Emergency
11 Medical Services Authority (EMSA), CDPH, and Division of Occupational Safety and
12 Health. Cal OES has established an Incident Management Assistance Team (IMAT) at
13 San Quentin to support healthcare and medical response and coordinate operational
14 logistics at the facility among local, state and federal agencies. And an ambulance strike
15 team from EMSA has been established at San Quentin to facilitate the rapid transfer of
16 patients to outside healthcare settings when needed.

17 Additional custody and health care staff have been redirected to San Quentin from
18 nearby institutions to ensure continuity of operations. Specifically, more than 130
19 correctional officers and 20 sergeants from other institutions are being redirected to San
20 Quentin. More than 40 nursing staff from CCHCS have been redirected from other
21 institutions and headquarters. These staffing assignments are for a 30-day term, with
22 lodging provided by the State.

23 CDCR has also increased testing at San Quentin for both inmates and staff. Inmates
24 are tested every 7 days at San Quentin (with some inmates already having been tested three
25 times). San Quentin is working with an epidemiologist and with their doctors to ensure
26 that they are implementing the best testing strategy.

27 Defendants continue to explore and consider all possible means of ensuring the
28

1 safety of the inmates and staff who live and work within the facility.

2 **B. California Healthcare Facility (CHCF)**

3 *Plaintiffs' Position:* As the Court is aware, CHCF reported its first COVID-
 4 confirmed patients in the last few days. One patient is from a Facility D Correctional
 5 Treatment Center building, another from a Facility C Outpatient Housing Unit building,
 6 and the third is from the Facility E Enhanced Outpatient Program. Given the enormous
 7 percentages of medical high-risk patients at the prison, including large numbers at risk of
 8 complications from COVID-19—more than 1600 patients, according to data provided by
 9 CCHCS in June—we fervently hope that the medical isolation of the COVID-positive
 10 patients, and quarantining of others, works to stop the spread of the virus.

11 Widespread COVID-19 infections at CHCF could represent a worst-case scenario
 12 within CDCR. As one example of the challenges at CHCF, one of the current active
 13 COVID-19 patients has end stage renal disease and receives dialysis three times a week.
 14 Before COVID-19 was diagnosed, the patient's dialysis took place at CHCF along with
 15 many of what we understand are more than 100 other dialysis patients at the prison, in a
 16 room in which the patients receiving the service spend hours in at a time. Now, according
 17 to CCHCS, the patient is receiving dialysis at a local hospital, in an isolation dialysis room.
 18 The hospital, we are told, has two such rooms, apparently the only ones available in the
 19 area. Should a large number of CHCF patients become infected with COVID-19, the
 20 challenges of continuing life-sustaining dialysis would seemingly be daunting.

21 Because these developments so recently took place, we have not been able to learn
 22 what steps have been taken, or whether additional resources or actions are necessary to
 23 reduce the risk of disease transmission. We ask the Court to have the Receiver and
 24 Defendants report at the Case Management Conference on the situation at CHCF,
 25 including the need for additional resources and actions.

26 *Defendants' Position:* Currently three COVID-19 positive inmates reside at CHCF.
 27 CHCF closed to movement on July 9, 2020 until further notice. On July 9, 2020, Warden
 28

1 Burton and CEO Dr. Aref from CHCF issued a memorandum to Associate Director
 2 Tammy Foss and Eureka Daye, Region I Executive Health Care/Director of Women's
 3 Health at CCHCS regarding CHCF's COVID-19 mitigation strategy. The memorandum
 4 details all efforts being undertaken by the institution to mitigate the spread of COVID-19,
 5 including directives to staff and inmates, indicates that the institution established an ICP
 6 effective July 6, 2020, and describes physical distancing measures and use of PPE.

7 Staff have also been reminded to wear masks and practice hygiene. Leadership at
 8 CHCF has also stress the importance of testing to staff. Further, staff are being cohorted
 9 together in groups to reduce the risk of cross-contamination. Finally, CHCF has cleared
 10 out an entire unit to make space for isolation or quarantine needs, and the CEO at CHCF,
 11 Dr. Aref, has been working with the Warden to free-up cell space in the event additional
 12 space is needed in the future to quarantine affected inmates.

13 C. California Medical Facility (CMF)

14 *Plaintiffs' Position:* We understand from the medical record that the one patient
 15 whose COVID-19 test at CMF was initially reported as "detected" was re-analyzed by the
 16 lab, which then reported it had made an error and the actual result of the test was "not
 17 detected." We further understand that a subsequent re-test of the patient again yielded a
 18 "not detected" result.

19 *Defendants' Position:* An inmate at CMF tested positive for COVID-19 on July 3,
 20 2020. By July 4, the prison's Institution Command Post had been activated and 12 tents,
 21 accommodating up to 120 inmates, were approved by July 6. Since that time, it has been
 22 determined that the inmate's test was a false positive, and currently no COVID-19 positive
 23 inmates reside at CMF. Nonetheless, the tents remain onsite and are being used to house
 24 inmates to increase the space for physical distancing in the housing units. Currently, 25
 25 inmates are housed in CMF's tents.

VII. CDCR'S FURTHER COVID-19 MITIGATION EFFORTS

A. Establishment of Incident Command Posts

Plaintiffs' Position: Plaintiffs support the creation of incident command post (ICPs) at each prison, as described below. As the situation at San Quentin makes clear, prison leadership cannot wait until they are in the midst of an outbreak to develop a response plan and put together a response team. See Williams & Bertozzi, *Urgent Memo COVID-19 Outbreak: San Quentin Prison* (June 13, 2020) at 1-3 (noting that "the over-reliance on local existing medical and correctional leadership to develop an outbreak response plan means that these leaders are tasked with making multiple acute decisions on a daily basis without enough people on the ground to operationalize a centralized game plan or long term strategy" and recommending the urgent creation of a COVID-Outbreak Emergency Response Team). While we support the creation of these teams, we believe their ability to develop and implement adequate, life-saving outbreak response plans will hinge upon CDCR's commitment to create sufficient quarantine and isolation space at each prison.

Defendants' Position: On July 2, 2020, Secretary Ralph Diaz directed each CDCR institution to set up an incident command post (ICP) to coordinate COVID-19 response and planning efforts. This directive applied even to institutions that had not experienced any outbreaks. At a minimum, ICPs are staffed with co-incident commanders from CCHCS and CDCR's Division of Adult Institutions (DAI), as well as designated staff to lead planning, operations, logistics, finance operations, and public information. Staffing varies by institution based on factors like size, layout, space, and outbreak status.

Generally, ICPs coordinate custody and medical responses to COVID-19 cases; collect, manage, and report COVID-19-related data; manage COVID-19 tests and testing data; track and allocate testing equipment and PPE inventory; create and update assessments and plans related to COVID-19 and mitigation efforts; and maintain communication with local health departments and healthcare providers. Additionally, ICPs work in conjunction with internal departments and external stakeholders and agencies to meet the institution's ongoing needs while also taking proactive measures. Specific

1 functions, day-to-day operations, and collaborations vary by institution based on the
 2 institution's individual needs. For example, see section IV.A. above regarding San
 3 Quentin's unified command center and current COVID-19 response efforts. Additionally,
 4 as part of their proactive outbreak-management efforts, ICPs will run drills to assess
 5 COVID-19 preparedness in the event of an outbreak.

6 As of July 7, 2020, all CDCR institutions have active ICPs, report updates to CDCR
 7 headquarters daily and provide other information as needed. For example, last week, each
 8 ICP was directed to collect data related to each institution's housing capacity, occupied
 9 and unoccupied beds, and beds needed in the event of a COVID-19 outbreak, and report
 10 this data to the Receiver's office to assist the Receiver's office in its analysis of this issue.

11 **B. Inmate Porter Training**

12 *Plaintiffs' Position:* Plaintiffs support all efforts to provide training and adequate
 13 equipment to incarcerated person workers. In April, we raised concerns about unsafe
 14 practices by apparently unsupervised or inadequately trained housing unit porters and
 15 volunteer incarcerated person workers at California State Prison, Los Angeles County.

16 *Defendants' Position:* On June 25, the California Prison Industry Authority
 17 (CALPIA) issued a memorandum about a COVID-19 training for all CDCR inmate porters
 18 at all institutions. The training includes, but is not limited to, personal hygiene and hand
 19 washing, safe work practices, chemical mixing and COVID-19, personal protective
 20 equipment, and COVID-19 on surfaces and cleaning after suspected/confirmed COVID-19
 21 (CDC recommendations).

22 **VIII. SITE VISITS AND DOCUMENT PRODUCTION**

23 **A. Plaintiffs' Site Visits**

24 On July 7, CDCR facilitated a virtual tour of the California Men's Colony.

25 **B. Information CDCR Has Produced to Plaintiffs Since July 2**

26 On July 2, CDCR provided answers to Plaintiffs' follow-up questions from the
 27 virtual prison tour at the California State Prison, Solano, which took place on June 25. On
 28

1 DATED: July 15, 2020

XAVIER BECERRA
Attorney General of California

2
3
4 By: /s/ Nasstaran Ruhparwar
5 DAMON MCCLAIN
6 Supervising Deputy Attorney General
7 NASSTARAN RUHPARWAR
8 Deputy Attorney General
9 Attorneys for Defendants

10 DATED: July 15, 2020

HANSON BRIDGETT LLP

11
12 By: /s/ Paul Mello
13 PAUL B. MELLO
14 SAMANTHA D. WOLFF
15 Attorneys for Defendants
16
17
18
19
20
21
22
23
24
25
26
27
28